THE

STUDENT'S GUIDE

TO THE LAW OF

REAL AND PERSONAL PROPERTY.

BY

JOHN INDERMAUR, SOLICITOR,

(*First Prizeman Michaelmas*, 1872),

AUTHOR OF "PRINCIPLES OF COMMON LAW," "MANUAL OF EQUITY," "MANUAL OF PRACTICE," "THE STUDENT'S GUIDE TO TRUSTS AND PARTNERSHIP," "THE STUDENT'S GUIDE TO COMMON LAW," ETC., ETC

AND

CHARLES THWAITES, SOLICITOR,

(*First Prizeman June*, 1880, *Reardon Prizeman*, *Scott Scholar*, *Conveyancing Gold Medallist*, *Etc*, *Etc*)

AUTHOR OF "GUIDE TO CRIMINAL LAW, ETC, ETC

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SECOND EDITION.

THE STUDENT'S GUIDE
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By JOHN INDERMAUR.

Author of "Principles of Common Law," "Manual of Practice," "Manual of the Principles of Equity," "Epitomes of Leading Cases," &c., &c.

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ADVERTISEMENT TO SECOND EDITION.

This work forms the fourth of the series of Guides to the Bar Final, the first being on Trusts and Partnership, by Mr. Indermaur; the second on Criminal Law, by Mr. Thwaites, of which a Second Edition has already been published; the third on Common Law and Practice, by Mr. Indermaur; and the fifth on Specific Performance and Mortgages, by Mr. Indermaur and Mr. Thwaites. In this edition the whole matter has been thoroughly reconsidered and revised, and, in particular, the Digest of Questions and Answers has been brought down to the present time, and includes those at the examination in Hilary, 1889. Every endeavour has been made to avoid repetition, and to eliminate any useless or out-of-the-way questions.

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March, 1889.

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THE STUDENT'S GUIDE

TO THE LAW OF

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I.—THE COURSE OF READING.

THE design of this Guide is to follow out the idea of previous ones in assisting law students in general, and in particular those reading for the Bar Final Examination. The Examiners at the Bar Final profess to examine in the elementary principles of the Law of Real and Personal Property, with reference chiefly to the treatises of Mr. Joshua Williams and Mr. Goodeve on those subjects, and the Conveyancing and Settled Land Acts. Though dealing, therefore, specially with those works, we propose also to go somewhat beyond them, and to give our readers general advice and assistance on the subject, telling them what to read, furnishing them with certain material to read, giving a set of test questions, and finally concluding with a digest of questions and answers framed from the actual questions hitherto asked at the Bar Final.

It is true that the examiners name certain works for special study; but the student will observe that they do not necessarily limit themselves to those works, and we desire to assume that there are some who are more desirous of attaining a thorough knowledge than of merely satisfying the very reasonable demands of the examiners.

We would, therefore, first of all advise those who possess such a desire on the course of their reading—

1. Read Williams' Real Property.

2. Read Williams' Personal Property.
3. Read Goodeve's Modern Law of Real Property.
4. Read Goodeve's Law of Personal Property.
5. Make a separate reading of the Conveyancing and Settled Land Acts.
6. Read Smith's Compendium of the Law of Real and Personal Property.
7. Read Tudor's Leading Cases on Conveyancing.
8. Read the dissertations in Pridcaux's Conveyancing, referring to some of the Precedents, and using also Indermaur's Student's Guide to Prideaux.
9. Specially analyse and consider the Statutes, of which a list is given in this work *(post* page 40).

We think that the works might well be read in the order above detailed first; but certainly, to conclude, Williams' Real Property, Williams' Personal Property, and Goodeve's Real Property and Goodeve's Personal Property should be read again. With regard to Tudor's Conveyancing Cases, in case the student should not be able to read the whole work, we give a list of the most important cases, and would remark that the notes to these cases are even more important than the cases themselves :—

Alexander v. Alexander.
Bowles' (Lewis) case.
Braybroke (Lord) v. Inskip.
Cadell v. Palmer.
Corbyn v. French.
Elliott v. Davenport.
Fox v. Bishop of Chester.
Gardner v. Sheldon.
Griffiths v. Vere.
Hanson v. Graham.
Morley v. Bird.
Pawlett v. Pawlett.
Richardson v. Langridge.
Shelley's case.

Stapleton v. Cheales.
Sury v. Pigot.
Tyrringham's case.
Viner v. Francis.
Wild's case.

The really industrious student will read these cases and notes from "Tudor," and in doing so, he will find it an advantage to have by him "Indermaur's Epitome of Leading Conveyancing and Equity Cases," which contains all the above; and, having read the particular cases and notes in the large volume, he can then turn to the Epitome and read that, and, very likely, may be able to add to the notes there. In default of reading the large work, a perusal of the cases and notes in the Epitome will be of service.

With regard to the Conveyancing and Settled Land Acts the student should read any good edition, say Wolstenholme and Turner, or Hood and Challis. If time permit, he will find the notes following the various sections of great service. Some of the sections are long and complicated, and an Epitome of the Acts will manifestly be of service. We have therefore given such an Epitome (see *post* page 6), and this should be studied in conjunction with the Acts; the condensation of the sections will tend to impress their provisions on the student. Some students may perhaps only find time to go through the Epitome, though here and there they will find it necessary to refer to the Acts.

Smith's Compendium is a hard work, and one in which it will be found very useful to take notes during the reading. The student who does not care to tackle Smith, but wishes to read something besides Williams and Goodeve will find a perusal of Edward's Compendium of the Law of Property in Land repay him well for the time spent on it.

As to taking notes, they are useful in moderation, but great moderation should be observed. It is useless to put down in a note-book a lot of points merely for them to stop there and not be remembered.

With regard to our list of Statutes, a great many of them will be found sufficiently touched upon in the works we have set for the student's reading, but if time permit, it will be found very advisible to also consider them separately, either by reference to the text books, or, in some cases, to the Statutes themselves, and, to save time, an epitome of them will be found extremely useful. We recommend Marcy's Epitome of Conveyancing Statutes; and as to the Conveyancing and Settled Land Acts, we have already dealt with them specially and given in this work our own Epitomes of them (see *post* page 6).

Thus, then, we have mapped out for the student what we consider a very thorough course of reading. We wish now to deal with students who have not time, or who are not willing, to go through so much, and to these we would say, omit Smith's Compendium, Tudor's Conveyancing Cases, and Prideaux, but do not fail to read the cases given (and the notes) in Indermaur's Epitome of Conveyancing Cases. A separate study of the Statutes, other than the Conveyancing and Settled Land Acts, may no doubt also be omitted. All should, however, strive to commit to memory the references or short titles of the most important of the Statutes.

Finally, we have to deal with those who will not, or cannot, even go through this modified course, meaning to do only what is actually essential. To such we can only say, omit also Goodeve's Real Property and Williams' Personal Property, and that will leave for essential study Williams' Real Property, Goodeve's Personal Property, the Conveyancing and Settled Land Acts, Epitome of Cases, and something in the shape of a consideration of the Statutes. If time is very pressing we may also add that Goodeve's Personal Property might possibly, with some degree of safety, be left out, the student reading instead the chapters in Williams' Personal Property on Settlements, Wills, and Intestacies, being Part IV., chaps. 1, 3 and 4. If only this

portion is going to be read, Williams' Personal Property is perhaps preferable to Goodeve's Personal Property.

All classes of readers should, however, carefully study the Test Questions, and the Digest of Questions and Answers given in this work (see *post* page 42, *et seq*). As to the Test Questions, they should be considered and studied during, or directly after, a perusal of the text books, and it will be excellent practice to write out answers to the Test Questions, or, at any rate, to a number of the most important of them. These Test Questions are mainly founded on Mr. Williams' and Mr. Goodeve's works. The final study with every one, to conclude the course of reading, should be the Digest of Questions and Answers, for by means of those the student's knowledge is focussed and brought as it were to a point.

Having now, we think, dealt with every one, and fully explained the course of reading, we will proceed to give the various matters we have referred to, consisting of:—

Epitomes of the Conveyancing and Settled Land Acts.

List of important Statutes.

Test Questions.

Digest of Questions and Answers.

The student who will industriously follow out even our smallest course of reading, not forgetting the Test Questions and the Digest of Questions and Answers, ought not to fail to satisfy the Examiners.

II.—EPITOME OF THE CONVEYANCING AND SETTLED LAND ACTS.

44 & 45 VICT., C. 41.

The Conveyancing and Law of Property Act, 1881.

(*Commencement of Act, 1st January*, 1882.)

(*Part I. is Preliminary and gives Definitions.*)

Part II., Sales and other Transactions.

Sec. 3.—(1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign has no right to call for the title to the leasehold reversion.

(2.) Where copyhold or customary property has been enfranchised, purchaser has no right to call for the title to make the enfranchisement.

(3.) A purchaser not to require any abstract or copy of any instrument affecting title prior to time prescribed (by law or agreement) for commencement of the title, even although the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to purchaser; and no prior enquiry to be allowed; and recitals in abstracted documents as to prior title to be presumed correct unless contrary appears.

(4.) Where land sold is held by lease (not including under-lease), purchaser shall assume, unless the contrary appears, that the lease was duly granted; and on production of the receipt for the last payment due for rent, shall assume, unless the contrary appears, that all the covenants, &c., have been duly performed and observed up to completion.

(5.) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and on production of the receipt for the last payment due for rent,

shall assume, unless the contrary appears, that all the covenants, &c., have been duly performed and observed up to completion of the purchase, and further that all rent due under every superior lease, and all covenants, &c., of every superior lease, have been paid and duly performed and observed up to that date.

(6.) On a sale of any property, the expenses of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection, and all other expenses relating thereto, and all attested, stamped, office or other copies thereof, shall be borne by the purchaser; and where the vendor retains possession of any document, the expenses of making any copy, which a purchaser requires, shall be borne by such purchaser.

(7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(10.) This section applies only to sales made after the commencement of this Act.

Sec. 4.—Where at the death of any person after the commencement of this Act, there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest descendible to his heirs general, his personal representatives shall have power to convey the same, so as to give effect to the contract.

Sec. 5.—Where, on a sale made or completed after commencement of Act, land subject to an incumbrance is sold, Court may, on application of any party to the sale, allow payment into Court of a sum sufficient to meet such incumbrance, and any costs and interest (not usually exceeding one-tenth of original amount paid in), and thereupon Court may declare land to be freed from incumbrances. The

Court has power afterwards, on notice to persons interested in the fund paid in, to direct transfer thereof.

Sec. 6.—In conveyances made after commencement of Act, it is not to be necessary to insert after the parcels the ordinary "general words" heretofore inserted, but they are to be deemed to be included.

Sec. 7.—(1.) In conveyances, settlements, assignments, mortgages, &c., made after commencement of Act, if grantor is expressed to convey *as beneficial owner*, the ordinary covenants for title (as heretofore inserted) shall be implied. (2.) Where a conveyance is made by a person *by direction of the beneficial owner*, such beneficial owner shall be deemed to convey as beneficial owner, and covenants on his part shall be implied accordingly. (3.) Where, in a settlement, the grantor conveys *as settlor*, a limited covenant for further assurance is implied. (4.) When any person conveys *as trustee*, or *as mortgagee*, or *as personal representative of a deceased person*, or *as committee of a lunatic*, a covenant that such person has not incumbered is implied. (5.) Where husband and wife convey *as beneficial owners*, the wife to be deemed to convey by direction of husband, and, in addition to the covenant implied on the part of the wife, there shall be implied (*a*) a covenant on the part of the husband as the person giving that direction, and (*b*) a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife. (6) Section not to extend to leases at a rent, or to any customary assurance except a deed conferring right to admittance.

Sec. 8.—In sales after the commencement of Act, purchaser not to be entitled to require that deed shall be executed in his or her solicitor's presence, but, *at his own cost*, may have same attested by a person appointed by him, who may, if he thinks fit, be his solicitor.

Sec. 9.—Where a person retains possession of documents and gives to another an acknowledgment in writing of the right of that other to production of those documents and to

delivery of copies thereof, or an undertaking in writing for safe custody thereof, such acknowledgment and undertaking respectively, shall have generally the same effect as the ordinary covenants for the purpose heretofore entered into, and shall satisfy any liability to give any such covenants.

Part III., Leases.

Sec. 10.—In leases made after commencement of Act, rent and benefit of lessee's covenants and conditions of re-entry are to run with reversion, notwithstanding severance of reversionary estate, and are recoverable and enforceable accordingly.

Sec. 11.—Like provision with regard to the obligation on lessor's covenants.

Sec. 12.—Also on any severance of reversion, every condition, right of re-entry, &c., shall be apportioned.

Sec. 13.—On a contract, made after 1881, to grant a lease for a term of years to be derived out of a leasehold interest with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

Sec. 14.—(1 and 5.) Lessor not to be able to take advantage of condition of re-entry or forfeiture in lease—except a condition (1) against assigning, underletting, &c., or (2) for forfeiture on bankruptcy or execution, or (3) in the case of a mining lease, on breach of a covenant or condition for allowing lessor to have access to or inspect books, accounts, records, weighing machines, or other things, or to enter and inspect the mine and the workings thereof—until he has served on lessee a notice specifying breach, and (if capable of remedy) requiring him to remedy same, and demanding compensation, and lessee fails within a reasonable time to comply therewith. (2.) Where lessor proceeds to enforce any such condition, the Court has power in lessor's action, or in any action brought by lessee, to grant lessee relief on such terms as it shall think fit. (7.) 22 & 23 Vict., c. 35, secs. 4 to 9, and 23 & 24 Vict., c. 126, sec. 2, are repealed.

(8.) This not to affect law relating to re-entry or forfeiture, or relief in case of non-payment of rent. (9.) This section applies to leases made either before or after this Act, *and shall have effect notwithstanding any stipulation to the contrary.*

Part IV., Mortgages.

Sec. 15.—In all mortgages before or after the Act, and notwithstanding stipulations to the contrary, the mortgagee (not having been in possession) shall on payment be bound, if required (instead of reconveying) to assign the mortgage debt and transfer the mortgage property to any third person.

Sec. 16.—Mortgagor, whilst he has right of redemption, under a mortgage made after 1881, to have right on payment of mortgagee's costs to inspect and make copies, &c., of title deeds.

Sec. 17.—Where there are several mortgages, and they (or one of them) are (or is) made after 1881, the doctrine of consolidation, unless the contrary is expressed, is no longer to exist.

Sec. 18.—A mortgagor *in possession*, and a mortgagee *in possession* respectively, shall have power to make leases as follows :—

An agricultural or occupation lease not exceeding 21 years, and a building lease not exceeding 99 years ; such lease to take effect within 12 months from date, to be at the best rent that can be obtained, without fine, to contain a covenant for payment of rent and condition of re-entry on non-payment for not exceeding 30 days, and a counterpart to be executed by lessee, and delivered to lessor; of which execution and delivery the execution of lease by lessor shall in favour of lessee be sufficient evidence. In the case of building leases, they must be in consideration of houses or buildings erected or improved, &c., or to be erected or improved, &c., within 5 years from date ; and a nominal or less rent than that ultimately payable, may be reserved for first 5 years or any part thereof. A mortgagor leasing under

this section must, within one month of making the lease, deliver to the mortgagee, or where more than one, then to mortgagee first in priority, the counterpart duly executed by lessee; but the lessee is not to be concerned to see that this provision is complied with. All this is subject to the express provisions of the mortgage deed, and applies only to mortgages made after 1881, unless otherwise agreed.

Sec. 19.—Mortgagee under deed executed after commencement of Act to have following powers:—*When principal money due*, power of sale in the ordinary way, and also power to appoint a receiver; and, *at any time after date of deed*, power to insure against fire; and, *when in possession*, power to cut and sell timber, &c., ripe for cutting, and not planted for shelter or ornament, such sale to be completed within 12 months from making of any contract of sale. These powers may be varied or extended by the mortgage deed.

Sec. 20.—The said power of sale not to be exercised until default in payment after *three* months' notice served on mortgagor, or one of the several mortgagors, *or* unless interest in arrear for *two* months, *or* there is breach of some other provision in the mortgage deed.

Secs. 21 and 22.—Mortgagee selling under above power to be able to vest property in purchaser, who is not to be affected, though the sale was not under the circumstances authorised. Money received from sale to be applied in discharging prior incumbrances, then all costs of sale, &c., then the mortgage debt, and then any balance to mortgagor. Mortgagee not to be liable for any involuntary loss on sale. The sale may be by any person for the time being entitled to receive and give a discharge for the mortgage money. Mortgagee's receipt to be sufficient discharge to purchaser.

Sec. 23.—(1, 3 and 4.) With regard to the power to insure, conferred by sec. 19, the insurance shall not exceed amount specified in mortgage deed; or, if no amount specified, shall not exceed two-thirds of the amount required in case of

total destruction to restore the property insured. All money received under insurance shall, at the option of mortgagee (and without prejudice to any obligation imposed by law or special contract), be applied in rebuilding, &c., or in or towards discharge of mortgage debt. (2.) The said power to insure is not to apply where there is a declaration in the mortgage that no insurance is required, or where mortgagor keeps up insurance in accordance with the mortgage deed, or where the mortgage deed contains no covenant as to insurance but mortgagor insures to the amount which the mortgagee is authorised to insure for.

Sec. 24.—(1 to 5.) The power to appoint a receiver conferred by sec. 19, shall not be exercised until mortgagee has become entitled to exercise power of sale given by Act. Then he may be appointed by writing under mortgagee's hand, and in like manner he may be removed and a new receiver appointed. When appointed, receiver to have all full and necessary powers; and to be deemed the agent of the *mortgagor*, who is to be solely responsible for his acts and defaults, unless the mortgage deed otherwise provides. Any person to be safe in paying to receiver. (6.) Receiver may retain out of moneys received—by way of remuneration and in satisfaction of all costs, charges, and expenses incurred by him as receiver—a commission at such rate, not exceeding 5 per cent. on the gross amount of all moneys received, as is specified in his appointment, and if no rate specified, then at the rate of 5 per cent. on that gross amount, or at such higher rate as the Court, on the receiver's application, thinks fit to allow. (8.) Receiver to apply moneys thus:—*(a)* In discharging rents, rates, outgoings, &c.; *(b)* In keeping down all annual or other payments, and the interest on any principal sums, having priority; *(c)* In payment of his commission, and any premiums on proper policies of insurance, and sums for necessary or proper repairs directed in writing by the mortgagee; *(d)* In payment of interest accruing on the principal money due under the mortgage; and *(e)* The

residue he shall pay to the person who, but for his possession, would have been entitled to receive the income of the mortgaged property.

Sec. 25.—(1 to 5.) Any person entitled to redeem can insist on a judgment for sale, instead of for redemption, if he brings an action for redemption, or for sale, or for sale or redemption in alternative; and in any action for foreclosure, sale or redemption, the Court may, on request of any person interested, direct a sale on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court to meet expenses of sale and to secure performance of the terms; but in an action brought by a person interested in the right of redemption and seeking a sale, the Court may direct the plaintiff to give security for costs, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants. The Court may direct a sale without previously determining the priorities of any incumbrancers. (6.) 15 & 16 Vict., c. 86, sec. 48, is repealed.

Part V., Statutory Mortgage.

Sec. 26.—(1.) A mortgage of *freeholds or leaseholds* may be by deed expressed to be made by way of statutory mortgage in the form given in Part I. of 3rd schedule to Act, with such variations as necessary. (2.) In such a deed there shall be deemed to be included and implied—*(a)* covenants for repayment of principal, and for payment of interest half-yearly, and *(b)* proviso for redemption on payment.

Sec. 27.—(1 and 2.) A transfer of such a statutory mortgage may be by deed, by way of statutory transfer, in such one of the three forms, A, B, and C, given in Part II. of the 3rd schedule to Act, as may be appropriate, with such variations as necessary; and such a transfer shall vest in transferee all powers and rights as if he had been original mortgagee. (3) If the transfer is in the form B—that is, mortgagor joining in transfer—a covenant shall be implied

by him to pay the principal money on the next day fixed for payment of interest, and if not then paid to continue to pay interest.

Sec. 28.—Where there are several mortgagors or covenantors, any implied covenants are to be deemed joint and several; and where several mortgagees or transferees, any implied covenants to be deemed with them jointly, unless mortgage money expressed to be secured in shares or distinct sums, when covenant to be deemed with each severally in respect of the sum secured to him.

Sec. 29.—A reconveyance of a statutory mortgage may be by statutory reconveyance, in form given in Part III. of 3rd schedule to Act, with variations as necessary.

Part VI., Trust and Mortgage Estates on Death.

Sec. 30.—(1 and 3.) In case of death, after 1881, of a sole trustee or mortgagee, the trust or mortgage estate* shall, notwithstanding any testamentary disposition, go to his personal representatives, who shall have all proper powers, and shall be deemed, for the purposes of this section, the heirs and assigns of the deceased within the meaning of all trusts and powers. (2.) Sec. 4 of 37 & 38 Vict., c. 78, and sec. 48 of 38 & 39 Vict., c. 87, repealed.

Part VII., Trustees and Executors.

Sec. 31.—When, in trusts created before or after this Act, any trustee is dead, or remains abroad for more than a year, or desires to be discharged, or refuses or is unfit to act, or is incapable of acting, then the person or persons (if any) nominated by the instrument creating the trust, and if none, or none able and willing to act, then the surviving or continuing trustees or trustee, or the personal representatives of the last surviving or continuing trustee, may appoint new trustees or trustee, and so that the original number of trustees

* By section 45 of the Copyhold Act, 1887, this provision does not apply to trust or mortgage estates in copyholds of inheritance, which still go to the devisee or heir.

may be increased or diminished, but, except when only one trustee was originally appointed, there must be always two trustees to perform the trust. The provision as to a dead trustee includes the case of a trustee under a will predeceasing testator, and that relative to a continuing trustee includes a refusing or retiring trustee. This section is subject to any contrary intention, or any terms or provisions, in the trust instrument.

Sec. 32.—When, in trusts created before or after this Act, there are more than two trustees, if one by deed declares that he is desirous of being discharged, and if his co-trustees and any other person empowered to appoint trustees consent by deed to his discharge and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired, and shall by the deed be discharged from the trust under this Act, without any new trustee being appointed in his place. This is subject to any contrary intention, or any terms or provisions, in the trust instrument.

Sec. 33.—When the Court appoints new trustees, any such new trustee shall *as well before* as after the trust property becomes properly vested in him, have all powers, &c., as if he had been originally trustee.

Sec. 34.—In deeds executed after 1881, either appointing a new trustee or discharging a retiring trustee, a mere declaration that the trust property shall vest in the new trustee or continuing trustee, as the case may be, shall have all the effect of a conveyance or assignment. But this does not apply to (1) copyholds, (2) mortgages, and (3) shares, stocks, &c.—all of which must still be separately conveyed.

Sec. 35.—In trusts created after commencement of Act, and subject to any contrary provision or intention in the instrument, trustees having a power of sale may sell or concur with any other person in selling all or any part of the property, subject to prior charges or not, by public auction or private contract, and generally as they think fit.

Sec. 36.—Trustees' receipts for any money, securities, or other personal property, payable or deliverable to them under their trust, to be a sufficient discharge.

Sec. 37.—In all executorships and trusts existing either before or after commencement of Act, and subject to the provisions or intentions of the trust instrument—executors may pay or allow any debt or claim on any evidence they think sufficient; and one executor, or two or more trustees acting together, or a sole acting trustee where authorised to act by himself, to have full power to accept composition, or take security for debts, or to allow time, or submit to arbitration, or release or settle debts, &c., provided any such act done in good faith. [This section does not apply to an administrator, *In re* Clay and Tetley, 16 Ch. D., 3.]

Sec. 38.—In executorships and trusts constituted after or created by instruments coming into operation after commencement of Act, powers given to two or more executors or trustees jointly, may, unless contrary expressed, be exercised by survivor or survivors.

Part VIII., Married Women.

Sec. 39.—Notwithstanding a married woman is restrained from anticipation, the Court may, if it think it fit, where it appears to be for her benefit, by judgment or order, with her consent, bind her property.

Sec. 40.—A married woman, whether an infant or not, to have power to appoint an attorney to execute any deed or do any act which she herself might execute or do.

Part IX., Infants.

Sec. 41.—Where an infant is entitled to a fee simple, or to any leasehold interest at a rent, the land to be deemed a settled estate within the Settled Estates Act, 1877.

Sec. 42.—When under an instrument coming into operation after 1881, an infant is beneficially entitled to possession of any land, and, if a woman, unmarried, the trustees under

settlement, or trustees appointed by the Court on the application of guardian or next friend of infant, may enter into and continue in possession of the land, and shall then have full powers to cut timber in usual course for sale or repairs, to pull down and rebuild houses, &c., and generally manage the property in the same way that infant might, if of full age, and may apply the income in keeping down expenses of management, and at their discretion for maintenance of infant, and shall invest and accumulate the residue in trust for infant on attaining 21, or, if a woman, married whilst an infant, for her separate use, or if infant dies, in trust for the parties then entitled. These provisions only apply so far as no contrary intention in the instrument under which infant derives the property.

Sec. 43.—Trustee (under any instrument operating either before or after commencement of Act) shall, unless instrument says otherwise, have full discretionary power of applying income for maintenance, education, or benefit of any infant either absolutely or contingently entitled, and may for this purpose resort to accumulations of any past years.

Part X., Rent Charges, &c.

Sec. 44.—Where a person is entitled to a rent charge, or other similar annual payment, *under some instrument coming into operation after commencement of Act*, he is to have the following powers to recover and enforce it :—(*a*) If in arrear for 21 days, power of distress ; *(b)* If in arrear for 40 days, power to enter into possession and take income till satisfaction ; *(c)* Or instead, or in addition, power to demise the land to a trustee for a term of years on trust, by mortgage or sale or demise of the whole or any part of the term, tc raise the money to satisfy him. These powers are subject to any contrary provisions or intention in the instrument.

Sec. 45.—Where there is existing any quit rent, chief rent, rent charge, or other annual sum issuing out of lands, same may be redeemed by the owner of the land by obtaining

a certificate from the Land Commissioners of amount to be paid for redemption, and then, after one month's notice to the person entitled to the rent, paying or tendering the amount certified. The commissioners then give a final and conclusive certificate that rent is redeemed. This provision does *not* apply to a tithe rent charge, or rent reserved on a sale or lease, or rent payable under a grant or licence for building purposes, or to any sum or payment issuing out of land not being perpetual.

Part XI., Powers of Attorney.

Sec. 46.—Person executing a deed under a power of attorney may execute either in his own name, or in the name of the donor of the power.

Sec. 47.—Attorney not to be liable for any payment made, or other act done by him, *bonâ fide*, under a power without notice of donor's death, lunacy, bankruptcy, or revocation. But this does not affect any right against the person to whom money has been paid.

Sec. 48.—Powers of attorney, on their execution being verified, may be deposited in the Central Office of Supreme Court of Judicature; and any office copy thereof to be sufficient evidence of the contents of the instrument and its deposit there. (General rules of court may be made for the purposes of this section.)

Part XII., Construction and Effect of Deeds, &c.

Sec. 49.—In conveyances, either before or after the Act, the word "Grant" is not to be necessary to convey any tenements or hereditaments.

Sec. 50.—After commencement of Act, freehold land, or a chose in action may be conveyed by one person direct to himself and another; or by a husband to wife, or wife to husband, either alone or jointly with others.

Sec. 51.—After commencement of Act, to pass fee simple,

the words "in fee simple" to be sufficient without word "heirs;" and to create an estate tail, the words "in tail" to be sufficient without the words "heirs of the body;" and to create an estate in tail male or female, the words "in tail male," or "in tail female," as case may be, to be sufficient.

Sec. 52.—Any person entitled to a power, whether coupled with an interest or not, may, by deed, release or contract not to exercise it. (See also sec. 6 of 1882 Act, *post*, page 24.)

Sec. 53.—A deed expressed to be supplemental to another, to be read and to have effect as if endorsed thereon, or as if it contained a full recital thereof.

Secs. 54, 55.—In deeds executed after 1881, receipt for consideration in the body of deed sufficient without a receipt endorsed; and any receipt, whether in body or endorsed, shall be sufficient evidence of payment to satisfy any subsequent purchaser not having actual notice of non-payment.

Sec. 56.—A solicitor in completing a purchase, &c., need not produce an authority from his client to receive the money, but his production of the deed duly executed, with receipt

Sec. 57.—Deeds in the form in 4th schedule to Act, or in like form, or using like expressions, shall be sufficient.

Sec. 58.—Covenants made after 1881, with regard to thereon, to be sufficient authority for payment to him.*
lands of inheritance, shall be deemed to be made with the covenantee, his heirs and assigns, and with regard to lands not of inheritance shall be deemed to be made with the covenantee, his executors, administrators, and assigns.

Sec. 59.—All ordinary covenants and bonds made after 1881 (including a covenant implied under Act) shall bind the heirs and real estate, without mention, subject to any contrary expression or intention.

* This is extended to cases where the vendors are trustees, by sec. 2 of the Trustee Act, 1888, as from 1st January, 1889.

Sec. 60.—A covenant made after 1881 (including any implied by Act) with two or more jointly, shall enure for the benefit of survivor or survivors, and any other person to whom right to sue devolves, subject to any contrary expression or intention.

Sec. 61.—In a mortgage, transfer of mortgage, &c., made after 1881, and subject to any contrary intention expressed in the instrument, when money is expressed to be advanced on joint account, or when the instrument is made to more persons than one jointly and not in shares, the money shall be deemed to belong to the mortgagees or transferees, &c., on a joint account as between them and the mortgagor or obligor; and the receipt of the survivors or survivor or personal representative of the last survivor shall be a complete discharge, notwithstanding any notice to the payer of a severance of the joint account.

Sec. 62.—Where, after commencement of Act, freeholds are conveyed to the use that any person shall have an easement, &c., thereout, it shall operate to vest such easement, &c., in that person.

Sec. 63.—In conveyances made after 1881, and subject to any contrary intention, not necessary to insert "all the estate," &c., clause, as same to be deemed included.

Sec. 64.—In construing any covenant or proviso implied under this Act, words importing singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as case may require.

Part XIII., Long Term.

Sec. 65.—Where a residue unexpired of not less than 200 years of a term, which, as originally created, was for not less than 300 years, is subsisting in land without any trust or right of redemption, and without there being (either originally, or by release, or other means) any rent, or with merely a peppercorn rent or other rent having no money

value, incident to the reversion, then the term may be enlarged into a fee simple to be subject, however, to the same trusts, powers, &c., as the term, by the execution of a deed containing a declaration to that effect made by any of the following persons, namely: *(a)* Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term, but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence; *(b)* Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not; *(c)* Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not. (See sec. 11 of 1882 Act, *post*, pages 26, 27.)

Part XIV., Adoption of Act.

Sec. 66.—All persons, whether solicitors, trustees, or the parties concerned themselves, adopting the provisions of the Act to be protected in doing so.

Part XV., Miscellaneous.

Sec. 67.—All notices required by this Act must be in writing, and may be served by being left at a person's last known place of abode or business; or, if to be served on a lessee or mortgagee, by being left for him on the land or at any house or building comprised in the lease or mortgage, or in case of a mining lease by being left at office or counting-house of the mine; or by sending through the post, registered, directed to the party by name at aforesaid place of abode, business, or counting-house, provided letter is not returned through the post undelivered.

Sec. 68.—The Act as to statutory declarations (5 & 6 Wm. IV., c. 62) may be cited by the short title of **The Statu-**

tory Declarations Act, 1835, in any declaration made or any purpose under or by virtue of that Act, or in any other document, or in any Act of Parliament.

Part XVI., Court, Procedure, Orders.

Sec. 69.—(1.) All matters within the jurisdiction of the Court under this Act shall be assigned to the Chancery Division. (3.) Every application under the Act, except where otherwise expressed, shall be by summons at chambers. (8.) General rules for purposes of Act to be deemed Rules of Court under sec. 17 of Appellate Jurisdiction Act, 1876 (39 & 40 Vict., c. 59, sec. 17).

Sec. 70.—(1.) An order of the Court under any statutory or other jurisdiction, shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or want of any consent, notice, or service.

Part XVII., Repeals.

Sec. 71.—Statutes 8 & 9 Vict., c. 119, and 23 & 24 Vict., c. 145, secs. 11 to 30, are repealed; but this is not to effect the validity or invalidity, or any operation, effect, or consequence of any instrument executed or made, or of anything done or suffered, before the commencement of this Act, or any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act.

Part XVIII. Relates to Ireland.

(The Schedules containing Forms are omitted.

45 & 46 Vict., C. 39.

The Conveyancing Act, 1882.

(Commencement of Act, 1st January, 1883.)

Sec. 1.—*Purchaser* includes a lessee or mortgagee, or an intending mortgagee, or other person, who for valuable consideration takes or deals for property; and *purchase* has a meaning corresponding with that of purchaser.

Searches.

Sec. 2.—Searches for judgments, deeds, or other matters, or documents, whereof entries are allowed or required to be made in the central office, may be made by an official, and certificate of result of search shall be conclusive in favour of a purchaser, and a solicitor obtaining an office copy of any such certificate shall not be answerable in respect of any loss that may arise from error in the certificate.

Notice.

Sec. 3.—(1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing, unless—

(i.) It is within his own knowledge, or would have come to his knowledge, if such inquiries and inspections had been made, as ought reasonably to have been made by him; or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

This section applies to purchases made either before or after

this Act; save that, where an action is pending at the commencement of this Act, the rights of the parties shall not be affected by this section.

Separate Trustees.

Sec. 5.—(1.) On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property, held on trusts distinct from those relating to any other part or parts of the trust property; or if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.

(2.) This section applies to trusts created either before or after the commencement of this Act.

Powers.

Sec. 6.—(1.) A person to whom any power, whether coupled with an interest or not, is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power; and on such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power. This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Married Women.

Sec. 7.—(1.) In section 79 of the Fines and Recoveries Act, there shall, by virtue of this Act, be substituted for the words, "two of the perpetual commissioners, or two special commissioners," the words, "one of the perpetual commissioners," or "one special commissioner;" and in sec. 83 of the Fines and Recoveries Act there shall, by virtue of this Act, be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all

other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorised to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after this Act by a married woman, before a judge of the High Court of Justice in England, or before a judge of a county court in England, or before a perpetual commissioner or a special commissioner, shall not be impeached or impeachable by reason only that such judge or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor, for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment.

(4.) The enactments 3 & 4 William IV., c. 74, sec. 84, from and including the words " and the same judge " to the end of the section and sections 85 to 88 inclusive, and 17 & 18 Vict., c. 75, are hereby repealed.

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after 1882.

Powers of Attorney.

Secs. 8, 9.—*(a)* If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, or *(b)* if a power of attorney, whether given for valuable consideration or not, it is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument—then, in favour of a purchaser, the power shall not be revoked at any time, or during the fixed period as the case may be, either by anything done by the donor of the power without the concur-

rence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and any act done at any time, or during the fixed time as the case may be, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power. This section applies only to powers of attorney created by instruments executed after 1882.

Executory Limitations.

Sec. 10.—Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect. This section applies only where the executory limitation is contained in an instrument coming into operation after 1882.

Long Terms.

Sec. 11.—Section 65 of the Conveyancing Act, 1881, shall apply to and include every term in that section mentioned, whether having as the immediate reversion thereon the freehold or not; but not—

(i.) Any term liable to be determined by re-entry for condition broken; or

(ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

Mortgages.

Sec. 12.—The right of the mortgagor, under section 15 of the Conveyancing Act, 1881, to require a mortgagee, instead of re-conveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over that of a subsequent incumbrancer.

Saving.

Sec. 13.—The repeal by this Act of any enactment shall not affect anything that has taken place before the commencement of this Act.

45 & 46 VICT., C. 38.

The Settled Land Act, 1882.

(Commencement of Act, 1st January, 1883.)

Sec. 2.—Any deed, will, agreement, Act of Parliament instrument, or number of instruments, whether made or passed before or after the commencement of this Act, whereby land stands limited by way of succession, to be deemed a *settlement* for the purposes of this Act. *Settled land* is land, or any estate or interest therein, which is the subject of a settlement. *Tenant for life* is the person for the

time being beneficially entitled to possession of settled land for life; and, if more than one, they together. *Trustees of settlement* are the persons under settlement trustees with power of sale or of consenting to sale, *or* (if none) persons declared trustees by the settlement, *or* (if none) persons appointed by Court.

Secs. 3, 4.—A tenant for life is to have a general power to sell, enfranchise, exchange, or make partition of the settled estate at the best price or consideration that can reasonably be obtained. The sale may be by public auction or private contract, together or in lots, with power to fix reserved biddings, and buy in at auction. Settled land in England must not be exchanged for land out of England.

Sec. 5.—On a sale, exchange, or partition, the tenant for life may, *with consent of the incumbrancer*, transfer an incumbrance from the land sold, exchanged, or partitioned on to any other part of the settled land whether already charged therewith or not.

Secs. 6, 7.—A tenant for life is to have a power of leasing as follows: a building lease not exceeding 99 years, a mining lease not exceeding 60 years, and any other lease not exceeding 21 years; such leases to be by deed, to take effect within 12 months from date, at the best rent that can reasonably be obtained with power to take a fine (which by the 1884 Act is capital money), to contain a covenant for payment of rent, and condition of re-entry on non-payment within a time not exceeding 30 days, and a counterpart to be executed by lessee; but the execution of the lease by the tenant for life to be sufficient evidence of this last point.

Secs. 8–11.—Every building lease to be partly in consideration of the erection or improvement or putting into repair of buildings; a nominal rent may be reserved for first five years. On contracts for building leases in lots, the entire rent may be apportioned among the lots; but rent on each lease must not be less than 10s., and must not exceed one-fourth of annual value of land in such lease after erecting the

buildings. In a mining lease, the rent may be made ascertainable, or to vary, according to acreage worked or minerals obtained. In both mining and building leases, on application to the Court, and showing that it is customary to do so, or that it is difficult to make leases otherwise, the Court may authorise the granting of leases for longer terms, or even in perpetuity, on conditions expressed in the lease. Under a mining lease, there shall always be set aside, as capital money, part of the rent, viz., when the tenant for life is impeachable for waste, three-fourths, and otherwise, one-fourth thereof.

Sec. 12.—The tenant for life may grant a lease to carry out a binding contract made by his predecessor, or under a binding covenant for renewal, or to confirm a void or voidable lease.

Sec. 13.—The tenant for life may accept a surrender of any lease (as to all or part only of the property leased).

Sec. 14.—Tenant for life of a settled manor may grant licences to copyhold tenants to make any such leases as he might make of freeholds; such licence may fix the annual value whereon fines and other customary payments are to be assessed, and must be entered on the court rolls of the manor.

Sec. 15.—The before-detailed powers of selling and leasing not to extend to the principal mansion house, or demesnes usually held therewith, *unless the consent of the trustees of the settlement, or an order of the Court is obtained.*

Sec. 16.—On a sale or grant for building purposes, under foregoing provisions, the tenant for life, for the general benefit of the residents on the settled land, or any part thereof, may appropriate portions thereof for streets, roads, paths, squares, gardens, or other open places, and may execute any deed necessary for vesting them in any trustees, or any company or public body.

Sec. 17.—A sale, exchange, or partition may be of land, apart from minerals, *or vice versâ*; and any mining lease may be of all or any of the minerals, &c.

Sec. 18.—*Mortgage.*—Money required for enfranchisement, equality of exchange, or partition, may be raised by the tenant for life by mortgage of the settled estate, in fee simple, or for other estate, and the sum raised shall be capital money.

Sec. 20 (sub.-sec. 3).—As to copyholds, any deed in manner provided by this Act to be sufficient without surrender, and thereupon admittance to be made; but the steward may require to be produced so much of the settlement as shows the title of the persons executing the deed, and the same may, if the stewards think fit, be entered on the court rolls.

Secs. 21–23.—Capital money arising under this Act in addition to any particular purpose for which it is raised, may be applied as follows: In investment on Government or other securities in which trustees may invest either by law or under the settlement, or in purchase of railway debenture stock of any company in Great Britain or Ireland, provided it has for the ten preceding years paid a dividend on its ordinary stock; in discharge of incumbrances, land-tax, &c., on the settled land; in payment of any improvement* authorised by this Act (see sec. 25), or for equality of exchange or partition; in purchase of the seignory, reversion, or freehold in fee of any part of the settled land; in the purchase of lands or mines or minerals in fee or of customary or copyhold tenure, or of leaseholds having not less than 60 years to run (but capital money arising from land in England not to be applied in purchase of land out of England, unless specially allowed by the settlement—sec. 23); in payment to any person becoming absolutely entitled; in payment of any costs or expenses in connection with any of

* By the Settled Land Act, 1887 (50 & 51 Vict., c. 30), when any improvement authorized by the 1882 Act, has been made—before or after 23rd August, 1887—and a rent-charge (temporary or perpetual) created under any statute to pay for it, capital money may be used to redeem or pay such rent-charge, and shall then be deemed to be applied for an improvement authorized by the 1882 Act, and sec. 28 of 1882 Act shall apply accordingly.

the powers under this Act; and in any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

Sec. 22.—For the purpose of being invested or applied as specified in last section, capital money is to be paid to the trustees of the settlement, or into Court, at option of tenant for life; and investment or application to be according to direction of tenant for life, or in default, at trustees' discretion, subject to any consent or direction in the settlement. Any capital money, before investment or application, to be deemed and treated as land; and the income of any capital money is to go as the income of the land would have gone under the settlement.

Sec. 25.—This section enumerates what shall be improvements authorised by the Act for the application of trust money. No less than twenty different kinds are given of which may be mentioned the following: Draining, warping, irrigation, inclosing, reclaiming, building farmhouses, farm cottages or saw mills, or construction of reservoirs, tramways, railways, canals, docks, jetties, piers, market places, streets, roads, trial pits for mines, &c.

Sec. 26.—A tenant for life desirous of applying capital money in improvements is to submit a scheme for approval to the trustees of the settlement, or the Court, showing proposed expenditure. Where the capital money is in trustees' hands, a certificate of the land commissioners (see sec. 48) that the works are properly executed, and what amount is properly payable thereunder, is necessary, or instead thereof, a like certificate of a competent engineer or practical surveyor, nominated by the trustees and approved by the commissioners, or, instead of either, an order of the Court authorising the expenditure. Where the capital money is in Court, then a scheme has first to be approved by the Court, and then money to be paid on an order of the Court, which will be granted on either of such certificates as already mentioned, or on such other evidence as the Court thinks fit.

Sec. 28.—Tenant for life must maintain, repair, and insure against fire, any such improvements, at his own cost, and must not cut timber planted as an improvement, except for proper thinning.

Sec. 29.—In executing, maintaining, or repairing any improvement authorised by this Act, the tenant for life, or any other person, not to be liable for waste, and may cut down and use timber and other trees not planted or left standing for shelter or ornament.

Secs. 30, 32, 33.—The improvements allowed by this Act are to be also allowed and to be deemed included in the Improvement of Land Act, 1864 (27 & 28 Vict., c. 114, sec. 9); and in the Land Clauses Consolidation Acts, 1845 (8 & 9 Vict., c. 18), 1860 (23 & 24 Vict., c. 106), and 1869 (32 & 33 Vict., c. 18); and in the Settled Estates Act, 1877 (40 & 41 Vict., c. 18); and in all settlements in which money is in the hands of trustees to be laid out in the purchase of lands.

Sec. 31.—In the same way that the tenant for life may make leases and sales, so also he may contract therefor, and may revoke such contracts and enter into fresh ones, as if he were absolute owner, and every contract shall be enforceable in favour of, or against, successors.

Sec. 34.—Trustees or the Court may, notwithstanding anything in the Act, require and cause the purchase-money paid in respect of a lease, or of any estate less than a fee simple, or in respect of a reversion dependent on any such lease, to be laid out, invested, and accumulated in such manner as, in the judgment of the trustees or the Court, will give to the persons interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest or reversion in respect whereof the money was paid, or as near thereto as may be.

Sec. 35.—A tenant for life, though impeachable for waste, may, with the consent of the trustees of the settlement or on an order of the Court, cut and sell timber ripe and fit for cutting; but three-fourths of the net proceeds to be set

aside as capital moneys, and the residue only to go as rents or profits.

Sec. 36.—The Court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding for recovery of such land; and direct the costs in connection therewith to be paid out of the settled estate. (Note.—This section is instead of sec. 17 of 40 & 41 Vict., c. 18, which is repealed. See *post*, sec. 64.)

Sec. 37.—Heirlooms—*i.e.*, personal chattels settled on trust to devolve with the land—may, by an order of the Court, be sold by tenant for life; but the proceeds to be capital moneys, and to be dealt with as before authorised, or to be invested in purchase of other heirlooms.

Secs. 38, 39.—In default of trustees under a settlement, the Court may, on application of tenant for life, appoint new trustees; and they, or the survivors, or the personal representatives of the survivor, shall be deemed the trustees of the settlement; but no capital money shall be paid to less than two trustees, unless the settlement specially authorises it being paid to one only.

Secs. 40-43.—Trustees' receipts to be full and sufficient discharges; each trustee to be liable for his own acts only, and not where he has only joined for conformity; and generally they are protected where they act *bonâ fide* in the exercise of the powers conferred on them by this Act. They are to have all powers of reimbursing themselves expenses.

Sec. 44.—In case of difference arising between tenant for life and trustees of settlement, respecting any powers or any matters under this Act, the Court may give directions respecting the matter in difference, and the costs of the application.

Sec. 45.—Tenant for life intending to exercise any of the powers conferred by this Act shall send by registered post,

not less than one month before he acts, a notice thereof to each trustee at his usual place of abode, and, if he knows the trustees' solicitor, to such solicitor also at his usual place of business. There must not, at the time of this notice, be less than two trustees, unless allowed by the settlement. A person dealing in good faith with the tenant for life is not concerned to enquire as to whether such notice has been given. (See amendment of this sec. by the Settled Land Act, 1884, 47 & 48 Vict., c. 18, sec. 5, *post*, page 38.)

Sec. 46.—The section contains regulations respecting payments into Court, applications, &c., of which the following are the chief:—Matters under the Act are assigned to the Chancery Division; payment into Court to be an effectual exoneration; applications to be made to the Court by petition,* or by summons in chambers; on an application by trustees of settlement notice to be served in first instance on tenant for life, and then on such persons as the Court shall think fit; general rules under the Act may be made, and to be deemed rules of court; the County Court of the district where the settled estate is situate, or from where the capital money arises, or in connection with which personal chattels are settled, is to have jurisdiction under this Act, where capital money, or securities in which it is invested, or the value of the settled estate does not exceed £500, and the annual rateable value of the settled estate does not exceed £30 per annum.

Sec. 47.—Any costs, charges, or expenses may be directed by the Court to be paid out of income, or out of capital money, or raised by means of sale or mortgage out of the settled estate.

Secs. 48, 49.—The Inclosure Commissioners for England and Wales, the Copyhold Commissioners, and the Tithe Commissioners for England and Wales, shall, by virtue of

* The Settled Land Act Rules say that all applications may be made by summons in chambers, and if a petition is presented without direction of a judge, only the costs of a summons shall be allowed. (Rule 2.)

this Act, become and be styled, the *Land Commissioners for England.* Every certificate and report approved and made by the Land Commissioners under this Act shall be filed in their office, and office copies shall be delivered out on application, and shall be sufficient evidence thereof.

Secs. 50-52.—The powers under this Act of a tenant for life are not capable of assignment or release, by express act or by operation of law; but remain exerciseable by tenant for life, notwithstanding assignment of his estate—except that, if tenant for life has assigned his estate for value, this section shall not operate to assignee's prejudice, and his rights shall not be affected without his consent, but, if the assignee is not in possession, tenant for life still to have the power of making leases, without taking a fine. Any contract by tenant for life not to exercise his powers under this Act is void, and any prohibition in the settlement or provision for forfeiture on exercise of such powers also void.

Sec. 53.—Tenant for life, in exercising powers under this Act, to have the duties and liabilities of a trustee for all parties entitled under the settlement.

Sec. 54.—On sale, exchange, partition, lease, mortgage, or charge, under this Act, persons dealing *bonâ fide* to be conclusively taken, as against all parties interested under settlement, to have given the best price, consideration or rent, and to have complied with all the requisitions of this Act.

Sec. 56.—All other powers, subsisting under any settlement or statute or otherwise, exerciseable by tenant for life, or his trustees, to be still existing, and the powers conferred by this Act to be cumulative, but, in case of any conflict, provisions of this Act to prevail; and, accordingly, the consent of tenant for life shall, by virtue of this Act, be necessary to the exercise by trustees, or other persons, of any power conferred by the settlement exerciseable for any purpose provided for in this Act. Should any doubts arise on matters within this section, the Court may, on application of

the trustees, or the tenant for life, or other person interested, give its decision, opinion, advice, or direction thereon. (See 47 & 48 Vict., c. 18, sec. 6, *post*, page 38.)

Sec. 57.—This Act not to prevent a settlement conferring larger or additional powers than those contained in Act.

Sec. 58.—Each person, as follows, shall, when his estate or interest is in possession, have the powers of, and be deemed (for the purpose of the Act) to be a tenant for life, viz.:—(1) Any tenant in tail—except a tenant in tail of land purchased by money, provided by Parliament in consideration of public services, who is restrained by Act of Parliament from barring his entail, the reversion being in the Crown. (2) A tenant in fee simple with an executory limitation over. (3) The owner of a base fee. (4, 5 and 6) A tenant for years terminable on life, or a tenant *pur autre vie* not holding merely under a lease at rent. (7) A tenant in tail after possibility of issue extinct. (8) A tenant by curtesy. (9) A person entitled to income of land under a trust or direction to pay it to him for a life, whether subject to costs of management or not, or until sale of land, or until forfeiture of his interest on bankruptcy or any other event.

Secs. 59, 60.—A person in his own right entitled to land, being an infant, for the purposes of this Act the land to be deemed settled land, and the infant tenant for life thereof. When an infant is tenant for life, the powers may be exercised by the trustees of the settlement, and, if none, then by such person and in such manner as the Court, on application of the testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

Sec. 61.—When a married woman is tenant for life and is entitled for her separate use, then she, without her husband, to have the powers of a tenant for life. If entitled, not for her separate use, then she and her husband together to have the powers. A restraint on anticipation not to prevent married woman's exercise of the powers of this Act.

Sec. 62.—When tenant for life is a lunatic, so found by inquisition, his committee, under order of Chancellor or other person entrusted by Queen's Sign Manual with the care of the persons and estates of lunatics, may exercise the powers of this Act.

Sec. 63.—Land subject to a trust or direction for sale, and the application and disposal of the sale money, or the income thereof, or the income until sale, or any part of such money or income, for the benefit of one or more for life shall be deemed settled land; and the person beneficially entitled for the time being to the income shall be deemed tenant for life; and the persons (if any) who are under the settlement trustees for sale of the settled land, or have power to consent to the sale, or if no such trustees, then the persons (if any) who are by the settlement declared to be trustees thereof for purposes of this Act, are, for the purpose of this Act, trustees of the settlement. (See amendment of this sec. by the Settled Land Act, 1884, secs. 6, 7, *post*, pages 38, 39.)

Sec. 64.—The following enactments (except as regards anything done thereunder before 1883) are repealed, viz.:—23 & 24 Vict., c. 145, Parts I. and IV., being the residue of the Act which the Conveyancing Act, 1881, did not repeal; 27 & 28 Vict., c. 114, secs. 17 and 18, and sec. 21, from "either by a party" to "benefice or," inclusive; and from "or, if the land owner" to "minor or minors," inclusive; and, "or circumstance," twice. Except as regards Scotland, 40 & 41 Vict., c. 18, sec. 17.

47 & 48 VICT., C. 18.

The Settled Land Act, 1884.

(Commencement of Act, 3rd July, 1884.)

Sec. 3.—This Act is to be read and construed as one with the Settled Land Act, 1882.

Sec. 4.—A fine received on the grant of a lease under the Act of 1882, is to be deemed capital money under that Act.

Sec. 5.—(1.) The notice required by sec. 45 of the Act of 1882, of intention to make a sale, exchange, partition, or lease, may be notice of a general intention.

(2.) On the request of the trustee, the tenant for life must furnish such particulars and information as may be reasonably required of him as to sales, exchanges, partitions, or leases effected, or in progress, or immediately intended.

(3.) A trustee may, by writing, waive notice or accept less than a month's notice.

(4.) The section applies to a notice given before or after this Act.

(5.) But not to a notice, the sufficiency of which was objected to before this Act passed.

Sec. 6.—(1.) In the case of a settlement within the meaning of section 63 of the Act of 1882, any consent not required by the terms of the settlement is not, by force of anything in the 1882 Act, to be deemed necessary to enable the trustees of the settlement, or any other person, to execute any trusts or powers created by the settlement.

(2.) In the case of every other settlement, not within section 63 of the Act of 1882, if two or more persons constitute the tenant for life, then, notwithstanding anything contained in section 56 of the Act of 1882, requiring the consent of all those persons, the consent of one only of those persons is to be deemed necessary to the exercise by the trustees, or by any other person, of any power under the settlement for any purpose provided by the Act of 1882.

(3.) This applies to dealings before or after this Act.

Sec. 7.—With respect to the powers conferred by section 63 of the Act of 1882, the following provisions are made :—

(1.) Those powers are not to be exercised without the leave of the Court.

(2.) The Court may by order give leave to exercise all or any of those powers, and the order is to name the person or persons to whom the leave is given.

(3.) The Court may from time to time rescind or vary any order or make any new order under this section.

(4.) So long as an order under this section is in force, neither the trustees of the settlement, nor any person other than the person having the leave, shall execute any trust or power created by the settlement, for any purpose for which leave has been given.

(5.) An order under the section may be registered and re-registered as a *lis pendens* against the trustees of the settlement, describing them as "Trustees for the purposes of the Settled Land Act, 1882."

(6.) Any person dealing with the trustees is not to be affected by any order made under this section, unless registered and re-registered as a *lis pendens*.

(7.) An application to the Court under this section may be made by the tenant for life.

(8.) An application to rescind or vary an order may also be made by the trustees of the settlement, or any person beneficially interested.

(9.) The person or persons to whom leave is given shall be deemed the proper person or persons to exercise the powers conferred by section 63 of the Act of 1882.

(10.) This section is not to affect any dealings which have taken place before the passing of the Act under any trust or power to which this section applies.

Sec. 8.—For the purposes of the Act of 1882, the estate of the tenant by the curtesy is to be deemed an estate arising under a settlement made by his wife.

III.—LIST OF IMPORTANT STATUTES.

13 Edw. 1, c. 1.	De Donis.
18 Edw. 1, c. 1.	Quia Emptores.
27 Hen. 8, c. 10	Statute of Uses.
32 Hen. 8, c. 1.	Wills.
1 Vict. c. 26	Wills.
15 & 16 Vict. c. 24	Wills.
13 Eliz. c. 5	Fraudulent Dispositions.
27 Eliz. c. 4	Voluntary Conveyances.
12 Car. 2, c. 24.	Abolishing Feudal Tenures.
4 Geo. 2, c. 28	Landlord and Tenant.
11 Geo. 2, c. 19.	Landlord and Tenant.
39 & 40 Geo. 3, c. 98	Thellusson Act.
9 Geo. 4, c. 94	Resignation Bonds.
1 Will. 4, c. 40.	Undisposed of Residue.
1 Will. 4, c. 46.	Illusory and Exclusive Appointments.
37 & 38 Vict. c. 37	Illusory and Exclusive Appointments.
2 & 3 Will. 4, c. 71	Prescription Act.
3 & 4 Will. 4, c. 74	Fines and Recoveries Act.
3 & 4 Will. 4, c. 104.	Debts.
32 & 33 Vict. c. 46	Debts.
3 & 4 Will. 4, c. 105	Dower.
3 & 4 Will. 4. c. 106.	Descent.
1 & 2 Vict. c. 110	Judgments.
27 & 28 Vict. c. 112	Judgments.
8 & 9 Vict. c. 106	Real Property Amendment Act, 1845.
8 & 9 Vict. c. 112	Satisfied Terms.
12 & 13 Vict. c. 26	Defects in Leases under Powers.
13 & 14 Vict. c. 17	Defects in Leases under Powers.
14 & 15 Vict. c. 25	Agricultural Fixtures and Agricultural Holdings generally.
46 & 47 Vict. c. 61	Agricultural Fixtures and Agricultural Holdings generally.
17 & 18 Vict. c. 113	Mortgages, and Vendors' Liens.
30 & 31 Vict. c. 69	Mortgages, and Vendors' Liens.
40 & 41 Vict. c. 34	Mortgages, and Vendors' Liens.
18 & 19 Vict. c. 43	Infants' Settlements.

20 & 21 Vict. c. 57 . .	Married Women's Reversionary Interests.
22 & 23 Vict. c. 35 . .	Lord St. Leonard's Act, and Amendment thereof, &c.
23 & 24 Vict. c. 38 . .	
25 & 26 Vict. c. 108 . .	Trustees' Powers as to selling Lands, reserving minerals.
30 & 31 Vict. c. 48 . .	Auctions.
30 & 31 Vict. c. 132 . .	Investment of Trust Funds.
31 Vict. c. 4 . . .	Sales of Reversions.
33 Vict. c. 14 . . .	Naturalisation Act, 1870.
33 & 34 Vict. c. 23 . .	Abolition of forfeitures for treason and felony.
33 & 34 Vict. c. 35 . .	Apportionment Act.
33 & 34 Vict. c. 93 . .	Married Women. (The first two of these Acts are repealed, but should still be considered on account of matters occurring before 1st January, 1883.)
37 & 38 Vict. c. 50 . .	
45 & 46 Vict. c. 75 . .	
47 & 48 Vict. c. 14 . .	
37 & 38 Vict. c. 57 . .	Real Property Limitation Act, 1874.
37 & 38 Vict. c. 78 . .	Vendors & Purchasers Act, 1874.
40 & 41 Vict. c. 33 . .	Contingent Remainders.
44 & 45 Vict. c. 41 . .	The Conveyancing and Law of Property Acts, 1881 & 1882.
45 & 46 Vict. c. 39 . .	
45 & 46 Vict. c. 38 . .	The Settled Land Acts, 1882, 1884, and 1887.
47 & 48 Vict. c. 18 . .	
50 & 51 Vict. c. 30 . .	
47 & 48 Vict. c. 71 . .	Intestates' Estates Act, 1884.
48 & 49 Vict. c. 72, sections 11, 12, 13 . . .	Housing of the Working Classes Act, 1885.
50 & 51 Vict. c. 73 . .	Copyhold Act, 1887, particularly sections 1, 4, and 45.
51 & 52 Vict. c. 42 . .	Mortmain and Charitable Uses Act, 1888.
51 & 52 Vict. c. 51 . .	Land Charges Registration and Searches Act, 1888.

IV.—TEST QUESTIONS ON THE LAW OF REAL AND PERSONAL PROPERTY.

1. Explain the origin of the terms "Real" and "Personal" property respectively, stating some essential differences between the two.

2. What are the different freehold estates in land, and the estates less than freehold respectively?

3. Compare the tenure of Knight's Service with that of Free and Common Socage, and explain the effect of 12 Car. 2, c. 24.

4. How is it that, notwithstanding 12 Car. 2, c. 24, the following special and peculiar tenures still exist:—(*a*) Gavelkind; (*b*) Borough English; (*c*) Grand Serjeanty; (*d*) Petit Serjeanty; (*e*) Frankalmoign?

5. Explain the incidents of each of the tenancies mentioned in the last question.

6. How do you account for the origin of copyholds? Point out the main distinctions between freeholds and copyholds.

7. Explain the relative rights of the lord and his tenant in copyholds.

8. What is the object of enfranchising copyholds, and state how an enfranchisement may be effected, pointing out any differences that occur when the enfranchisement takes place at the instance of the lord or the tenant respectively?

9. On an enfranchisement of copyholds, who has the right to the mines and minerals?

10. To whom do enfranchised copyholds escheat, when the owner dies intestate and without an heir?

11. What differences are there between ordinary copyholds and customary freeholds?

12. An estate may be the same as another in quality, and yet different to it in quantity. What do you understand by this?

13. What difference (if any) is there in the case of free-

holds between a grant or devise to A, and a grant or devise to A and his heirs?

14. Can personalty be limited by way of estates to one and then to another? What would be the effect of a grant or devise of personalty to A for life, and then to B absolutely?

15. It is desired that personalty shall be so settled that A may enjoy it for his own life, then B, if he survives, for his life, and then that it shall go absolutely to a certain person. In what way may this object be accomplished?

16. Give an instance of the application of the maxim: *Cujus est solum ejus est usque ad cœlum.*

17. Explain the position of a tenant for life with regard to the following three particulars: (*a*) Waste; (*b*) the granting of leases; (*c*) selling the estate.

18. Explain practically the effect of the Apportionment Act, 1870 (33 & 34 Vict., c. 35.)

19. What was originally, and what is now, the effect of a grant of freeholds to A and the heirs of his body? Refer to the Statute on the subject, and explain how you account for its having been passed.

20. By what words can you create an estate tail (*a*) in a deed (*b*) in a will?

21. How was the object of the statute *De Donis* frustrated? How is this frustration, originally accomplished in a circuitous way, now effected? Name the present authority.

22. What is the effect of a limitation of copyholds to A and the heirs of his body?

23. Explain the position of a tenant in tail with regard to waste, showing in what respects his position is different if he is a tenant in tail after possibility of issue extinct.

24. When is there a protector to a settlement, and what are his powers and position? How do you account for the existence of such an office?

25. What is a base fee, how may it be created, and how may it be enlarged into an estate in fee simple absolute?

26. Lands are limited unto and to the use of A and his heirs, in trust for B for life, and then to C and the heirs of his body. During B's life who would be the persons to join in the disentailing assurance; and with regard to the parties to so join in barring the entail, what difference, if any, would there have been prior to the 3 & 4 Wm. 4, c. 74?

27. If A, having a remainder in fee after a life estate, grants out of his remainder an estate to B in tail, is there any protectorship here?

28. What is the effect of a grant and devise respectively to A and his heirs male?

29. What difference is there, and why, in the case of either of the following paying off an incumbrance upon the inheritance:—*(a)* A tenant for life. *(b)* A tenant in tail in remainder. *(c)* A tenant in tail in possession?

30. What is an estate in fee simple? How many kinds of fee simple are there? Is it correct to say that the owner of a fee simple estate has an absolute property in it?

31. Explain the object and effect of the statute of *Quia Emptores* (18 Ed. 1, c. 1.)

32. What was, and is, the position of an alien with regard to holding property?

33. What is necessary at the present day to constitute a good gift of lands to a charity? Can such a gift ever, and if so, when, be made by will?

34. Give a short history of the past and present law as to judgments affecting land.

35. What circumstances led to the passing of the Statute of Uses? State its chief enactment, and show how its object was frustrated.

36. What is the effect of a grant simply to A without consideration, and why? What difference would it make if it were unto and to the use of A?

37. Grant to A to the use of B in trust for C. Explain the rights and position of each, with reasons.

38. A *cestui que* trust of real and personal property

respectively, dies intestate, and without heirs, or next of kin, to whom does the property go?

39. What were formally, and what are now, the rights of a husband in the following properties of his wife—(*a*) Her freeholds; (*b*) Her leaseholds; (*c*) Her choses in possession; (*d*) Her choses in action?

40. Define curtesy. What are the essentials to curtesy? What peculiarities are there with regard to it in copyholds and in gavelkind land respectively?

41. Define dower, and show the difference with regard to it if the parties were married prior to or since the 1st January, 1834, both with regard to the right to it and the mode of barring it.

42. Detail and explain the modern method of barring dower when the persons were married prior to 1st January, 1834.

43. Distinguish between (*a*) a reversion and a remainder; and (*b*) a vested and a contingent remainder, giving an instance of each.

44. How is it that although the Common Law rule was different, yet at the present day an assignee of a reversion is able to take advantage of the conditions of re-entry inserted in the original lease?

45. Explain the following:—attornment, rent service, rent charge, rent seck, quit rent, fee farm rent, rack rent.

46. What was formerly, and what is now, the effect upon an underlease, of the merger or surrender of its reversion?

47. Explain the rule in Shelley's case. Does it have any application to personal property?

48. Give the two rules for the creation of contingent remainders. With regard to the first one, what was the object of inserting, in settlements, trustees to preserve contingent remainders?

49. With regard to the same rule, what was the effect of 8 & 9 Vict., c. 106, sec. 8, and 40 & 41 Vict., c. 33 respectively?

50. Grant to A for life, and after his decease to the heirs of B. A dies during B's lifetime. What becomes of the estate?

51. With regard to the second rule for the creation of contingent remainders, explain and illustrate the doctrine of *cy pres*.

52. Define an executory interest. In what two ways may an executory interest arise? Why is it that it can only arise in a deed by means of the Statute of Uses?

53. Distinguish between a shifting and a springing use respectively, giving an instance of each.

54. Within what time must an executory interest arise? What is the leading case on the subject?

55. Give the provisions of the Thelluson Act (39 & 40 Geo. 3, c. 98), limiting the period for accumulation of income. State particularly the exceptions in the Act.

56. What is the effect of a direction to accumulate income exceeding the period allowed by the Thelluson Act? Refer to the leading case on the point.

57. Define a power of appointment, showing how it operates, and explaining why it properly comes under the denomination of an executory interest.

58. Does an appointee, taking under a power, take simply from the person *exercising* the power, or from the person *creating* the power? Explain your answer by illustrations.

59. What difference is there as regards the rule against perpetuities between a general and a special power respectively?

60. What is the effect under the 12 & 13 Vict., c. 26, of a lease made by a limited owner under a power, but not strictly in conformity with the terms of that power? What would have been the position in such a case prior to the Act?

61. A tenant for life mortgages his life interest. Does this mortgage affect the power of leasing conferred on him by the Settled Land Act, 1882?

62. Powers may be classified as (1) general and special,

(2) appendant, in gros, and collateral. Explain and instance each of these.

63. With regard to powers, explain the effect of 1 Wm. 4, c. 46, and 37 & 38 Vict., c. 37, respectively.

64. Define incorporeal property, and compare the mode of conveying it with the original mode of conveying corporeal property. Why can either property be now conveyed by deed of grant?

65. Define and compare rights of common and easements respectively.

66. What do you understand by a *profit a prendre?* Give an instance. What do you understand by a *profit a prendre* being claimed as a *que estate?*

67. What rights cannot be claimed by custom?

68. Give an instance of an easement arising by necessity.

69. How many kinds of rights of common are there? Explain each kind.

70. With regard to an easement, explain what is meant by the dominant and servient tenements respectively.

71. What are the chief ways in which an easement may be extinguished? What is the one case in which unity of possession will not extinguish an easement?

72. With regard to the length of time of enjoyment that will give a title either to a right of common, or an easement, state the provisions of the Prescription Act (2 & 3 Wm. 4, c. 71.) What was the law on this point prior to that Act?

73. What is an advowson? How many kinds of advowsons are there? Distinguish between each.

74. Are advowsons and next presentations respectively, real or personal property?

75. What is the proper length of title to be shown to an advowson?

76. What are tithes? Distinguish between tithes, a tithe rent charge, and a modus. Explain how it was that tithes came into lay hands.

77. If a person having a right to tithes bought the land

out of which the tithes issued and subsequently resold that land, would his right to tithes have revived? Does merger occur of a tithe rent charge?

78. What is a Resignation Bond, and when is it valid?

79. Define simony, and refer to the point decided in the case of Fox v. Bishop of Chester. What purchase of a living by a clergyman would be simoniacal, although not so on the part of a layman?

80. On the death of an incumbent explain the rights and liabilities as to dilapidations as between his representatives and the successor to the living.

81. What bearing respectively did the Statute of Frauds (29 Car. 2, c. 3, secs. 1, 2, & 3), and the Real Property Amendment Act, 1845 (8 & 9 Vict., c. 106, sec. 3), have upon leases?

82. What is the effect of a parol lease for four years?

83. A, having a lease for seven years, holds over after the expiration of that lease. Explain his position directly the lease expires, and how and why that position becomes altered by the acceptance of rent by the landlord.

84. What is the effect of a yearly tenant not quitting in pursuance of notice (*a*) when the notice is given by the landlord, and (*b*) when the notice is given by the tenant?

85. What is the difference between privity of contract and privity of estate? Give an instance of a liability in respect of privity of estate.

86. A, having but an interest consisting of a term of seven years in land, professes to make a lease for twenty-one years. In another case, having no interest at all, he professes to make a like lease. In both cases he immediately afterwards becomes possessed of the fee simple. State fully in each case the position and rights of the lessee.

87. State shortly the provision of the Conveyancing Act, 1881, with regard to forfeitures of leases for breaches of covenant.

88. State the three most prominent alterations in the law

of descent, introduced by the Inheritance Act, 3 & 4 Wm. 4, c. 106.

89. How has the first rule of descent been amended by 22 & 23 Vict., c. 35, secs. 19, 20?

90. Explain the rule as to the admission of the half blood, and compare the position of the half blood with regard to realty and personalty respectively.

91. An estate descends to two daughters as co-parceners. One of them dies leaving a son. To whom does her share go, and why?

92. Distinguish on an intestacy between persons taking *per stirpes* and *per capita*, giving an instance of each.

93. A person dies intestate, leaving (*a*) a wife and two children, (*b*) two children and no wife or other relative, and (*c*) a wife and no other relative. In what way in each case will his personal property go?

94. A person dies intestate, leaving a father and a brother. How does his personalty go?

95. A person dies intestate, leaving a mother, a brother, and a sister. How does his personalty go?

96. A person dies intestate, leaving a mother, a brother, and two nephews, children of a deceased sister. How does his personalty go?

97. A person dies intestate leaving six nephews, five of them being children of a deceased brother, and one the child of a deceased sister. How does his personalty go?

98. A person dies intestate leaving a nephew and two grand nephews, the children of a deceased nephew. How does his personalty go?

99. A person dies intestate leaving one child of a deceased son, five children of a deceased daughter, a wife, and a father. How does his personalty go?

100. What do you understand by hotchpot? Illustrate your answer.

101. Give the outline of an ordinary settlement of real estate upon a marriage, particularly pointing out how the

pin money, jointure, and portions respectively are provided for.

102. Give the outline of an ordinary settlement of personal estate upon a marriage. It is desired to settle personalty upon marriage in the same way as if it were realty, viz., in strict settlement. Can this be done?

103. When, and in what way, and to what extent, can infants make valid marriage settlements?

104. On the death of a trustee under a settlement, in what different ways may a new trustee be appointed? On whom does the trust property now devolve on death of a trustee?

105. What leases may, under the Settled Land Act, 1882, be made by the tenant for life? Is any consent or notice necessary prior to leasing?

106. The like question as regards a sale by the tenant for life.

107. How may satisfied terms arise? With regard to them, what is now the provision contained in 8 & 9 Vict., c. 112?

108. Are any special formalities necessary to be observed in either an ante-nuptial or a post-nuptial settlement of furniture?

109. What do you understand by uses in strict settlement?

110. Can a settlement of leaseholds ever be construed as a voluntary settlement so as to be bad in the case of a subsequent sale of the property? Give reasons, pointing out in what respects a settlement of such property is different from a settlement of freeholds.

111. Give a short history of the chief different instruments which have from time to time been used in conveying lands *inter vivos*.

112. What is the proper mode of conveying copyholds on a sale and on a mortgage respectively?

113. What powers are, by the Conveyancing Act, 1881 conferred on mortgagees, and when do they respectively

arise? Is it safe to rely on this Act, or should express powers be inserted in the mortgage?

114. What are the differences between the position of a lessee and assignee of a lease respectively?

115. Explain an *interesse termini*.

116. On a lease of a house is there any implied contract by the landlord that it is reasonably fit for habitation? Refer to the Housing of the Working Classes Act, 1885.

117. What is the title to be shown on an open contract for the sale of a freehold and leasehold estate respectively?

118. What is the title to be shown to lands which have been the subject of an exchange? Distinguish between the cases of the exchange having been made prior to and since 1845.

119. Trace the position with regard to the making of a will of lands from the earliest down to the present time.

120. The like, with regard to a will of personalty.

121. Are the following competent witnesses to a will:— The executor, a creditor of the testator, a legatee under the will, the husband or wife of any legatee, the child of any legatee?

122. State the different ways in which a will may be revoked.

123. A makes a will devising Whiteacre to B, and subsequently contracts to sell Whiteacre, and then dies. What is the position of B?

124. When, under a general devise, did trust and mortgaged estates pass? What do the Conveyancing Act, 1881, and the Copyhold Act, 1887, now provide on the point?

125. Explain the following: general legacy, specific legacy, demonstrative legacy, ademption, abatement.

126. What is a lapse? What alterations did the Wills Act (1 Vict., c. 26) make in the law of lapse?

127. When does a legacy carry interest?

128. Give two instances of a construction being placed on

words in a will different to what would be put on the same words in a deed.

129. What is the position of a married woman with regard to making a will?

130. Devise to X after the death of Y. Does Y take any, and what, estate, and why?

131. What estate do trustees take under a devise to them without words of limitation? What difference was there before 1 Vict., c. 26?

132. Where a testator by his will has charged his real estate with payment of his debts, but has made no express provision as to who is to have the power of sale to raise the necessary money, in whom is the power of sale vested under the provisions of 22 & 23 Vict., c. 35?

133. What powers of enforcing payment of rent charges are conferred by the Conveyancing Act, 1881?

134. A, being possessed of freehold and leasehold property, and also certain debts owing to him, is desirous of vesting the same respectively in himself and B jointly. How should he effect his object?

135. Limitation to A, and if he shall die without issue to B. What was the effect of this at Common Law, and how has it been affected by 1 Vict., c. 26, and the Conveyancing Act, 1882, respectively?

136. In what cases is it necessary for a tenant for life before exercising the powers conferred on him by the Settled Land Act, 1882, to obtain the consent of the trustees or of the Court?

137. State shortly the effect of section 63 of the Settled Land Act, 1882, and show how that section has been dealt with by the Settled Land Act, 1884.

V.—DIGEST OF QUESTIONS AND ANSWERS ON THE LAW OF REAL AND PERSONAL PROPERTY.

(*The Answers, except where references are given, are composed mainly from Williams' Real Property, Goodeve's Real Property, Williams' Personal Property, and Goodeve's Personal Property, and all due acknowledgment is here made to the Authors and Editors of those works.*)

1.—Introductory.

Q. Explain the origin and meaning of the distinction between "real" and "personal" property.

A. After 12 Charles 2, c. 24, lands, tenements, and hereditaments were classified as real property, and goods and chattels as personal property. The expressions originated in the legal remedy for the deprivation of possession of the different things. Where the possession of land was withheld from its rightful owner, his remedy was by a real action (*actio in rem*) to recover it; but for a wrongful withholding of goods, the remedy was by a personal action (*actio in personam*) against the wrongdoer to recover damages, since the goods might have been destroyed.

Q. In what essential respects do personal property and real property differ from each other in nature, title, and ownership respectively?

A. Personal property is not affected by the feudal rules of tenure which affect real estate;[a] is essentially the subject of absolute ownership;[b] consists of goods and chattels, and includes interests less than freehold in real property;[c] the remedy for its deprivation has always been by personal action for damages against the wrong doer;[d] it is transferred by delivery, or bill of sale, or will;[e] and on the death of the owner always devolves on his legal personal representative in trust to pay debts and then divide amongst the legatees or next of

kin; the descent is governed by the law of the owner's domicil. Real property consists of lands, tenements and hereditaments; is practically indestructible, and, therefore, not the subject of absolute ownership, estates only being held in it; is governed by the feudal rules of tenure; the remedy for its deprivation has always been by real action to recovery the *res ipsa* (action for the recovery of land); it is transferred by deed or will; on the death of the owner it devolves on his devisee or heir-at-law, subject, however, to debts if the personalty is insufficient; and its descent is governed by the *lex loci rei sitæ*.

Q. Give the principal exceptions, or apparent exceptions, to the rule that personal property is essentially the subject of absolute ownership and cannot be held for any estate.

A. (*a*) Chattels so closely connected with land that they partake of its nature, pass with it when disposed of, and descend with it to the heir of the deceased owner. These are (1) title deeds; (2) heirlooms, which are strictly chattels that go to the heir by special custom, *e.g.*, crown jewels, coat armour, deed boxes, but popularly (and under the Settled Land Act, 1882) are personalty settled to devolve along with real estate in strict settlement; (3) fixtures; (4) chattels vegetable, not being emblements; and (5) animals *feræ naturæ*, unless a special property has been acquired in them. (*b*) At law, a term of years might be given to one person for life and then to another absolutely, but not any other property; in equity, however, all kinds of personalty except articles *quæ ipso usu consumuntur* might be given to one for life and then to another; and now under the Judicature Acts the equity rule prevails.

Q. What are fixtures? Can a tenant remove them?

A. Personal chattels annexed to the freehold. The common law maxim is *Quicquid plantatur solo, solo cedit*, and they were irremovable. But exceptions have always been permitted allowing tenants to remove, during the term, fixtures erected for purposes of trade, ornament, or domestic

use. And by 14 & 15 Vict., c. 25, and the Agricultural Holdings Act, 1883, the like privilege is accorded to agricultural fixtures on certain conditions being complied with. (See Elwes v. Mawe, and Notes in Indermaur's Common Law Cases, 6th edition, 70.)

Q. (a) *On the death, intestate, of a tenant in fee simple of a house, who is entitled to the fixtures set up by him in it?* (b) *On the death of the tenant for life of a house or other building, who would be entitled to the fixtures set up by him for the purpose of trade, or of ornament, or domestic convenience?* (c) *When houses or buildings are let for a term of years, and the tenants set up fixtures for the purposes of trade, or of ornament, or domestic convenience, who is entitled to them on the expiration of the term?* (d) *When fixtures are demised with the buildings in which they are, in whom does the property in the fixtures remain?*

A. (*a*) The rule as between the executors of the tenant in fee simple, and his heirs, seems very complicated. The executors can only remove fixtures put up by the owner in fee for the purposes of trade, ornament, and domestic convenience. As regards trade fixtures, a cyder-mill was held removeable by the executors, but in later cases, machinery for the working of coal mines (Fisher v. Dixon, 12 Cl. & F. 312), and salt-pans (Lawton v. Salmon, 1 H. Black, 259) were held to pass to the heir. As regards the right of the executor to ornamental fixtures, the rule appears to be, that pictures and looking-glasses go to the executor, although they are fixed by nails and screws to the walls, and so are attached to the freehold—but if they are let into the wainscot so as to take the place of panels, they go to the heir. (Williams on Executors, pages 738-745.) (*b*) The rules as to the right of a tenant for life to fixtures put up by him are not clear, but his executor appears to have the right to all fixtures put up for trade, ornament, or domestic convenience. (Williams on Executors, pages 747-751.) (*c*) The tenant is entitled to the fixtures, but he must remove them before the expiration of

his tenancy. There are special rules, however, applicable to agricultural tenants. (See notes to Elwes v. Mawe, Indermaur's Common Law Cases, 70.) (*d*) The property in the fixtures remains in the landlord.

Q. Explain the following maxims;—(1) *The father to the bough, the son to the plough.* (2) *Mobilia sequuntur personam.* (3) *Delegatus non potest delegare.*

A. (1) This is a maxim having reference to the tenure of gavelkind, and signifying that here there was no escheat on attainder or conviction for murder. (2) This expression means that moveables follow the person and are governed by the law of the domicile of the owner, unlike lands which are governed by the *lex loci rei sitæ.* (3) An agent cannot delegate his authority to another—thus, if I appoint A as my agent, he cannot substitute B.

Q. Explain fully the following terms: Emblements, Estate pur autre vie, *Springing Use, Satisfied Term.*

A. *Emblements* are the fruits of the earth produced by labour and manurance, and brought to perfection within the year, *e.g.*, corn, but not clover. The executors of a tenant for life have a right to them unless the tenancy ends by the act of the tenant for life. *An estate pur autre vie* is a freehold estate held by one man for the life of another. Formerly, if the tenant *pur autre vie* died during the life of the *cestui que vie*, the first person who entered on the lands could hold them as *general occupant* until the *cestui que vie* died; unless, indeed, the grant had been to the tenant and his heirs, or the heirs of his body, in which event the heir took as *special occupant* during the remainder of the life of the *cestui que vie* by virtue of his being named in the grant. But by 1 Vict., c. 26, secs. 3 and 6, the owner of an estate *pur autre vie* may dispose of it by will; and if he does not, and there is no special occupant, the lands go to the legal personal representative of the dead tenant *pur autre vie* as part of his personal estate. *A springing use* is an executory interest arising by deed under the Statute of Uses, *e.g.*, a

power of appointment. *A satisfied term* was a long term of years (usually created by a settlement to secure portions for younger children) after the object for which it was created had been accomplished. If not then destroyed by a proviso for cessor in the instrument creating it, or by merger in the freehold, an assignment of it was usually taken by a purchaser of the property to trustees in trust to attend upon and protect the inheritance, so that if any incumbrance had been created since the term which might affect the estate conveyed to the purchaser, he could set up the term as a protection. By 8 & 9 Vict., c. 112, every term, both satisfied and attendant, on 31st December, 1845, was to cease, but afford the same protection as before the Act; and every satisfied term thereafter becoming attendant, by declaration or construction of law, should cease without affording any protection.

Q. What is meant by Escheat?

A. *Escheat* is the resulting of freehold estate to the lord of whom it is held, where the tenant dies without disposing of it and without heirs. It is (1) *propter defectum sanguinis —i.e.*, where the tenant dies literally without issue; or (2) *propter delictum tenentis—i.e.*, where the tenant was attainted for treason or convicted for felony, which attainted his blood and interrupted the succession. This second kind can only happen now on outlawry in criminal proceedings, 33 & 34 Vict., c. 23. The Intestate's Estates Act, 1884, extended the law of escheat to incorporeal hereditaments, and to equitable estates in corporeal hereditaments.

Q. Give and illustrate the legal meaning of the words— ancestor, assigns, charity, corporation, persons, purchaser, seisin.

A. *An ancestor* is one that has gone before in a family, *e.g.*, a father; he differs from a predecessor, as the latter term is applied to a corporation, and those who have been in office before the present holders, whilst the former must be a natural person. *Assigns* are persons who take property by

conveyance (voluntarily, *e.g.*, a purchaser, a devisee, or by operation of law, *e.g.*, trustee under bankruptcy) from the owner, as opposed to the heir who claims by descent. The word assigns used in a deed is simply meant to show that the party takes an assignable estate; it is not a word of limitation, per Jessel, M.R., in Osborne to Rowlett, 13 Ch. Div., 777. *Charity* may mean (1) all the good affections men ought to feel towards each other, or (2) relief to the poor; but (3) legally it means a general public use, and includes all cases coming within the spirit of the Statute of Charitable Uses, 43 Eliz., c. 4, as opposed to superstitious uses which enure for the benefit of the donor and not for charity, and are void as contrary to general policy. *A corporation* is a body having perpetual succession and a common seal; it may be aggregate, *e.g.*, a public company, or sole, *e.g.*, a bishop; it may also be ecclesiastical or lay. *Persons* are either natural (*i.e.*, individuals) or artificial (*i.e.*, created by human laws for purposes of society and government—viz., corporations.) *A purchaser* is either (1) a buyer of property, or (2) the root from which the descent of real property is traced. In the latter sense, he is the person last entitled to realty otherwise than by descent, 3 & 4 Wm. 4, c. 106. *Seisin* means the feudal possession of a corporeal hereditament, and is either in deed, which is actual possession, or in law, which is where lands descend but the heir has not actually entered.

Q. *Explain the following terms:—advowson, chief rent, feoffment, prescription, shifting use, enfranchisement.*

A. *An advowson* is the perpetual right of presentation to an ecclesiastical benefice; it is an incorporeal hereditament, and real property; it is presentative, collative, or donative; it is either appendant to a manor, or in gross, *i.e.*, a separate property; and it is either an advowson of a vicarage or a rectory. *A chief rent*, or quit rent, is the small fixed rent paid by the freehold tenants of a manor, by payment of which they are free from all other service in respect of their tenure. *A feoffment* was a conveyance at common law used to convey

a freehold estate in possession in corporeal hereditaments; its requisites are (1) competent parties, (2) words of pure donation, ascertained property, (4) proper words of limitation, (5) livery of seisin in deed or in law subsequently perfected by entry during the lives of feoffor and feoffee; and since 8 & 9 Vict., c. 106, (6) a deed, except in conveyances by an infant under the custom of gavelkind. *Prescription* means the acquisition of a title to an incorporeal right by means of immemorial user, which implies a grant. The right could be claimed either as being exercised in gross by the claimant and his ancestors; or, as being exercised as appendant or appurtenant to lands held by the claimant and his ancestors; and in both cases twenty years' uninterrupted user was presumptive proof of the right, which might, however, be defeated by shewing its first exercise to have been since the first day of the reign of Richard 1. If the right is claimed as appendant or appurtenant, the claimant may resort to the Prescription Act, 2 & 3 Wm. 4, c. 71, under which (1) easements of light become absolute after twenty years' uninterrupted user; (2) all other easements after twenty years cannot be defeated by merely shewing the precise time when they began to be used, and after forty years become absolute; and (3) as to all *profits a prendre*, the periods are thirty and sixty years. *A shifting use* is an executory interest created under the Statute of Uses, by which the legal seisin of lands is moved from one person to another, *e.g.*, the name and arms clause in a will by which lands are given to A, but if within a given time he does not take the testator's name and arms, then to B. *Enfranchisement* is the conversion of copyholds into freeholds; and is either voluntary by the lord conveying the freehold to the tenant, or compulsory under the Copyholds Acts, 1852-1887.

Q. Explain heir-at-law, customary heir, heir-apparent, heir presumptive.

A. A man's heir-at-law is the person upon whom, on the man's death intestate, his real estates devolve by the rules of

law. A customary heir is one who inherits under any special custom, *e.g.*, Borough English. A man cannot have an heir until he is dead, for *nemo est hæres viventis*; neither can he make his heir, for *solus deus hæredem facere potest, non homo;* but he may have an heir-apparent, *i.e.*, some person living who must be the heir if he survive, *e.g.*, an eldest son, or an heir-presumptive, *i.e.*, a person who if the man were to die now would be his heir but is liable to be cut out by the birth of a nearer relative, *e.g.*, a daughter whose claim would be ousted by birth of a son.

2.—Tenures, Estates, &c.

Q. Distinguish between allodial lands and feudal lands. Who were tenants in capite, *who lord paramount, who mesne lords?*

A. Allodial lands were enjoyed as free and independent property, held of no one and charged with no service; the owners could dispose of them at pleasure. Feudal lands were lands held of a superior, subject to the performance of services, generally military; instead of being the absolute owner, the holder of the feud had merely the usufruct, and could not even dispose of that at his pleasure. Tenants *in capite* were those who held feudal lands from the sovereign direct. The king was lord paramount, all lands being in theory held of him. Mesne lords were tenants *in capite*, who granted out all or part of their lands to be held of them in subinfeudation.

Q. Describe briefly the nature and incidents of the tenure of ancient demesne.

A. The tenure exists only in manors which belonged to the Crown in the days of Edward the Confessor and William the Conqueror, and which are termed *Terrae Regis* in Domesday Book. The tenants are freeholders, and the evidence of their title is to be found in the court rolls. The tenants possess certain privileges, the chief of which is a right to sue and be sued only in the lord's court. The tenure is of

little practical importance now, and probably originated in gifts to enfranchised villeins, subject to certain services, *e.g.*, supplying the king's court with a certain quantity of provisions.

Q. What was subinfeudation? When, why, and how was it abolished?

A. Subinfeudation was the method by which a feudal owner conveyed those parts of his feud not required by himself, by a grant to be held of him, subject to the performance of services, and by a tenure similar to his own. Subinfeudation of the fee simple was abolished in 1290, by the Statute of Quia Emptores, 18 Edward I., c. 1, at the instigation of the barons who perceived that their privileges as superior lords were gradually being encroached upon. The statute enacts that every free man may sell his tenements at his pleasure, but that the purchaser shall hold of the same chief lord of the fee and subject to the same services and customs as the vendor held.

Q. What are the nature and effect of disclaimer? Who may, and who may not disclaim an estate?

A. A disclaimer of *tenure* is where a tenant who holds of any lord neglects to render him the due services; and upon action brought to recover them, disclaims to hold of his lord. Such disclaimer in any court of record operates as a forfeiture to his lord. As to disclaimer of *estate*, no person can be compelled to take an estate against his will, except the heir-at-law; and the estate vested in him can be got rid of and revested by his executing a deed of disclaimer. Any person may disclaim, except the heir-at-law taking by descent. A trustee in bankruptcy is under certain restrictions as to disclaimer. (1 Stephen's Commentaries, 475, 476.)

Q. Describe and distinguish the various kinds of conditional estates.

A. Estates upon condition are those, the existence of which depends on the happening, or not happening, of some uncertain event, whereby the estate may be originally created,

or enlarged or finally defeated. They are on condition *implied—e.g.*, a grant of an office or franchise, or *expressed.* In the latter case the condition is either precedent—*i.e.*, where unless and until the condition is performed the estate cannot vest; or subsequent—*i.e.*, where the estate vests at once, but is liable to be defeated by the grantor re-entering if the subsequent condition is not performed. There is also a conditional limitation—*i.e.*, an estate so limited that it must determine when the contingency on which it is granted fails, *e.g.*, grant to A and his heirs tenants of Dale.

Q. Mention the different kinds of estates which may exist in land.

A. Freehold estates and estates less than freehold. The latter of these are estates for years, estates at will, and estates at sufferance. The former are (1) Freeholds of inheritance—viz., estates in fee simple and estates tail; and (2) Freeholds not of inheritance—viz., all life estates; and may be conventional—*i.e.*, created by the act of the parties, or legal—*i.e.*, arising by operation of law, *e.g.*, tenancy by curtesy.

Q. Define, (a) *estate in fee simple*, (b) *in fee tail*, (c) *in base fee*, (d) *after possibility of issue extinct*, (e) *at sufferance, and* (f) *chattels real and personal.*

A. (*a*) An estate to a person and his heirs; (*b*) an estate to a person and the heirs of his body, either general or special, male or female; (*c*) an estate created by the barring of an estate tail by a tenant in tail in remainder without the consent of the protector; (*d*) an estate in special tail when the person from whose body the issue are to come dies without issue; (*e*) the estate of a person who, having come lawfully into possession, holds over after the expiration of his lawful title; (*f*) chattels real and personal are personal property, the first though personal yet being connected with realty, and the latter purely personal.

Q. Enumerate and classify the various kinds of estates for life which may subsist in freehold and copyhold lands.

A. They are either conventional (*i.e.*, created by the act of the party by deed or will), or legal (*i.e.*, created by operation of law). Conventional life estates are either for the holder's own life or *pur autre vie*. Legal life estates are those in dower, curtesy, and tenancy in tail after possibility of issue extinct.

Q. By what words may an estate for years, for life, in tail, and in fee be created by deed and will respectively?

A. No precise words are needed to create an estate for years, but the words used must indicate that the tenant is to hold for a fixed period of time, *i.e.*, for years, months, weeks, or days. An estate for life is created in a deed by a grant to A for his own life or for the life of another, or by a grant to A simply: but in a will the intention must be expressed that the devisee shall not take more than a life estate, because a devise to A simply will give him all the testator's interest unless a contrary intention is expressed (1 Vict., c. 26, sec. 28.) An estate tail is created in a deed by a grant to A and the heirs of his body, or to A in fee tail (Conveyancing Act, 1881, sec. 51); but in a will it may be created by any words of procreation evincing the intention, *e.g.*, to A and his seed, to A and his offspring. To create a fee simple in a deed the words of limitation must be clear and precise, viz.: "to A and his heirs," or by the Conveyancing Act, 1881, "to A in fee simple"; but more lax rules of construction apply to a will, in which a mere devise "to A" without further words of limitation will pass the fee simple or other the testator's whole interest, unless it clearly appears on the face of the will that such was not the testator's intention. (1 Vict., c. 26, sec. 28.) In a conveyance by deed to a corporation, the words used would be "to the corporation and their successors."

3.—Life Estates, Settled Land Acts, &c.

Q. What estate or interests may be created in land with regard to their quantity and quality respectively? What

difference is there in the quality of an estate limited to A for life, and of an estate limited to A for 1,000 *years, if he shall so long live.*

A. The quantity of an estate means the time of its continuance. The quality of an estate has reference to the mode of its enjoyment; from this point of view estates may be (1) legal or equitable; (2) in possession or expectancy; (3) in severalty, in joint tenancy, in tenancy in common, or in coparcenery. In the case put there is no difference in quality; the difference is in quantity, the life estate being freehold and real estate, and the term of years less than freehold and personal property.

Q. Define legal waste and equitable waste.

A. Legal waste is such waste as a Court of Law took cognizance of; but if the life estate were granted without impeachment for waste, although at law the tenant could commit any kind of waste, a Court of Equity would not allow the tenant to do such unconscionable acts of waste as pulling down or destroying the mansion house or cutting ornamental timber, and so these acts were called equitable waste. Under the Judicature Act the rules of equity prevail.

Q. (a) *What is meant by voluntary waste and by permissive waste?* (b) *Is the estate of a legal tenant for life liable after his death to the remainderman for permissive waste suffered in his lifetime?* (c) *Will the Court interfere at the instance of a remainderman to restrain an equitable tenant for life from suffering permissive waste upon the trust property?*

A. (*a*) Waste is any spoil, injury, or destruction to, or alteration of, the inheritance. Voluntary waste is waste committed by actually pulling down, altering, or injuring the property; permissive waste is allowing the property to deteriorate for want of repairs. (*b*) A tenant for life is liable for all acts of voluntary waste, but not for permissive waste (**Barnes** v. Dowling, 44 L. T., 809) unless the instrument creating his estate expressly makes him so (Woodhouse v.

Walker, 5 Q. B. Div., 404); and his estate would be answerable or not accordingly. (*c*) Not unless the tenant was expressly bound not to commit such waste (Woodhouse v. Walker, *supra*).

Q. A freeholder, having granted a lease for years at a rent payable quarterly, dies during the last quarter of a year intestate. The rent was three-quarters of a year in arrear at his death, and the fourth quarter's rent has become payable. To what person, or persons, does the whole year's rent belong, and by what person, or persons, must it be received?

A. The three-quarters' arrears of rent, being actually due at the death, belong to the legal personal representative of the dead landlord, who may sue and distrain for them. The proportion of the fourth quarter's rent up to the death also belongs to them, and the balance belongs to the remainderman, reversioner, heir, or devisee (as the case may be); and the whole quarter's rent may be sued and distrained for by the remainderman, etc., who is personally liable to the representatives in an action by them for the apportionment. (See 33 & 34 Vict., c. 35.)

Q. What powers have been conferred on tenants for life with respect to the grant, sale, and demise of easements?

A. The general powers conferred upon such tenants by the Settled Land Act, 1882, apply to easements. Under secs. 3 & 4 the tenant has a very full and general power of sale, either by public auction or private contract, and also power to grant. Under sec. 6 he has power to grant leases as follows:—a building lease 99 years, a mining lease 60 years, and any other lease 21 years; and by sec. 10 the Court may, under certain circumstances, authorise for building or mining purposes the granting of leases for longer terms, and even in perpetuity.

Q. State briefly the effect of the regulations under which the powers given to the tenant for life under the Settled Land Act, 1882, are to be exercised.

A. Under the 1882 Act, sec. 45, a month's notice must first be sent by registered post to the trustees and their solicitors, if known; and, under the 1884 Act (sec. 5), this may (as regards a sale, exchange, partition, or lease) be a general notice, and be waived or shortened. Under the Act of 1882 (sec. 15), no lease or sale of the principal mansion-house, &c., can be made without consent of trustees or an order of Court; and, under sec. 37, a sale of heirlooms cannot be made without an order of Court. Under secs. 3 & 4, there is a general power of sale at the best price that can be obtained, either by public auction or private contract, together, or in lots. Under sec. 7, the lease must be at the best rent that can be obtained, to take effect in possession not later than twelve months after its date, and is to contain a covenant for payment of rent, and a condition of re-entry on non-payment within a time to be therein specified, not exceeding 30 days. Secs. 8-11 also contain further regulations specially relating to building and mining leases.

Q. State the effect of the general regulations under which a tenant for life may lease settled lands for building and mining purposes.

A. The term may not exceed 99 years for a building lease, and 60 years for a mining lease. (6) The lease must be by deed; to take effect in possession within twelve months; (13) must reserve the best rent, regard being had to any fine (which by the Settled Land Act, 1884, is capital money) and to any money laid out for the benefit of the settled land and to the circumstances; (14) must contain a covenant to pay rent, and a right of re-entry if the rent is not paid within a time named, not exceeding 30 days; (17) a counterpart must be executed by the lessee and delivered to the tenant for life. The building lease must be made partly in consideration of the erection, or improvement, or repair, of buildings or improvements; a peppercorn rent may be reserved for the first five years; if the land is to be leased in lots, the entire rent may be apportioned, but the rent on each lot must not be less than ten

shillings, nor greater than a fifth of the annual value of the land with the buildings. In the mining lease, the rent may be an acreage or a tonnage rent; and a minimum rent may be reserved, with power to make up back-workings or not; and the tenant for life gets three-quarters, or (if impeachable for waste) only a quarter of the rent, the rest being capital. The tenant for life must give one month's notice to the trustees, which (by the Act of 1884) may be a general notice and may be waived or shortened. (Settled Land Act, 1882, secs. 6-11, 45.)

Q. By whom are the powers conferred by the Settled Land Acts exercisable when the tenant for life is (a) *an infant,* (b) *a married woman,* (c) *a lunatic?*

A. (*a*) By the trustees of the settlement, and if there are none then by such person and in such manner as the Court, on the application of a testamentary or other guardian, or next friend, of the infant, either generally or in a particular instance, orders (sec. 60). (*b*) Where the married woman is entitled for her separate use, or under any statute for her separate property, or as a *feme sole*, by the married woman; and where she is entitled in any other way, then by her and her husband together (sec. 61). (*c*) By the committee of his estate, under an order from the Lord Chancellor, obtained on petition by the committee or any person interested in the settled land (sec. 62).

Q. What effect has an assignment of his life estate by operation of law, or otherwise, upon the exercise by a tenant for life of his powers under the Settled Land Act, 1882?

A. The powers do not pass to the assignee, but remain in and continue exerciseable by such tenant for life (sec. 50. See fully page 35). If the tenant for life neglects or refuses to exercise the powers when it would be for the benefit of the estate, the Court will compel him to do so, (*Re* Mansel's Settled Estates, W.N. (1884) page 240.)

Q. For what purposes of the Conveyancing Act, 1881, *and the Settled Land Act,* 1882, *respectively, are trustees of a settle-*

ment needed, and who would be trustees for those purposes if none were appointed by the settlement?

A. Under sec. 42 of the Conveyancing Act, 1881, trustees are needed where the beneficial owner of land is an infant, and, if a female, is unmarried, for the purpose of managing the property, and applying the income as directed by that section. Under the Settled Land Act, 1882, trustees are needed—(1) to receive notice of the tenant for life's intention to exercise his powers under the Act; (2) to consent to a sale or lease of the mansion and demesne; (3) to consent to a sale of ripe timber where the tenant for life is impeachable for waste; (4) to approve a scheme for improvements; (5) to receive and pay money; (6) to make investments under the direction of the tenant for life; and (7) to exercise the powers of the life tenant, where such tenant is an infant. Under both Acts, if there are no trustees under the settlement, the Court will appoint trustees, on application by or on behalf of the tenant for life.

Q. What power is given by the Settled Land Acts for the protection or recovery of settled land?

A. By sec. 36 of the 1882 Act, the Court may approve (1) of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken, or proposed to be taken, for protection of settled land; or (2), of any action or proceeding taken, or proposed to be taken, for recovery of land subject to a settlement; and may direct payment of the costs, charges or expenses out of the settled property.

* *Q. Thomas Styles, who died in 1884, by his will, made in 1870, devised his real estate in Kent and Lancashire to his married daughter Mary Smith for her life, for her separate use, without power of anticipation; remainder to her husband John Smith for his life; remainder to the first and other sons of John and Mary Smith successively, according to seniority,*

* This question and the three subsequent ones, were all asked in one paper, and form a series.

in tail male; and he declared that he intentionally omitted from his will any power of sale. Mr. and Mrs. Smith, whose eldest son is an infant, desire to sell a farm, part of the settled land in Kent. Advise them how they should proceed, and by whom a conveyance to a purchaser can be made.

A. I should advise that the declaration is inoperative (Settled Land Act, 1882, sec. 51); and Mrs. Smith as tenant for life can sell and convey the farm alone without her husband (secs. 61-63). The wife should obtain the sanction of the trustees, or an order of Court, if the farm forms part of the lands usually occupied with the mansion-house (sec. 15); and in any case sell the property, paying regard to the provisions of the above Act as to mode of sale and disposal of the net proceeds, which will be capital. Notice must be given to the trustees of the settlement and their solicitor (unless waived), and, if there are no trustees, the tenant for life can be restrained from selling until two have been appointed (sec. 38). But a person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of the notice.

Q. By the will referred to in the preceding question, a collection of pictures was settled as heirlooms annexed to the principal mansion on the Kent Estate. How can any of the pictures be sold; to whom must the proceeds be paid; and how may they be applied?

A. Mrs. Smith as present tenant for life under the settlement, can sell the (so-called) heirlooms; but she must obtain an order of Court for the purpose, upon application by summons at chambers. The proceeds of sale are capital money, and must be paid either to the trustees of the settlement or into Court, at the option of the tenant for life; but may not be paid to fewer than two persons as trustees, unless the settlement gives express authority for receipt of capital by one trustee. The proceeds may be applied (1) in the purchase of other chattels of the same nature as the chattels sold, or any other nature, to be settled and held on

the same trusts, and devolve like the chattels sold, and (2) in any way in which capital money is directed to be applied by the Settled Land Act, 1882. (See secs. 37, 22, 21, 25.)

Q. Mr. and Mrs. Smith believe that coal may be found in part of the settled land in Lancashire, and they wish to spend £1,000 out of the sale money of the heirlooms, in borings and trial pits to ascertain if coal exists capable of being worked to a profit. Can they do so, and how?

A. Yes, under sub-sec. 19 of sec. 26 of the Settled Land Act, 1882. They should submit a scheme for the execution of the works, showing the proposed expenditure, to the trustees of the settlement or to the Court. If the money is in the hands of trustees, the application for approval may be to them (sec. 26), and they may pay the money over on a certificate of the Land Commissioners, or a competent engineer or able practical surveyor, or an order of Court. There is an appeal from the decision of the trustees to the Court (sec. 44); and where the money is in Court the application must be made to the Court (sec. 26). The trustees are not justified in paying the money until the work has been done.

Q. If they discover good coal, who can grant a lease of it to a colliery company; and what must be done with the rent?

A. Mrs. Smith, as tenant for life, may lease for not longer than 60 years (Settled Land Act, 1882, secs. 2 (10) and 6); or if the settlement gives power to the trustees to grant mining leases they may do so with the consent of the tenant for life (sec. 56). If Mrs. Smith is tenant for life without impeachment of waste, she is entitled to three-fourths of the rent as rents and profits, and the remaining one-fourth is capital money under the Settled Land Act, 1882, and must be set aside and applied accordingly; but if she is liable for waste, then one-fourth comes to her as income and three-fourths go as capital money (sec. 11).

Q. A father devised freehold land to trustees (whom he appointed trustees of the settlement) in fee, upon trust to receive the rents, and thereout pay annuities which at present absorb the entire rents, and to pay any surplus to his son till he shall become bankrupt, or assign or encumber his life estate, or die; with an executory trust for the remaindermen on the happening of any such event. No such event has happened. Who can sell the land and convey the fee simple to the purchaser, and who must be parties to the conveyance?

A. Under secs. 2 and 58 of the Settled Land Act, 1882, the son is tenant for life; and can therefore sell (under secs. 3 and 4), and convey the estate to the purchaser (under sec. 20). He must, of course, give notice to the trustees, and it is their duty to bring the matter before the Court if they have reason to think that the sale will not be *bonâ fide* in the interest of all interested. The annuitants would have a *locus standi* on the hearing.

Q. State the general nature of the provisions of the Settled Land Act, 1882, sec. 34, relative to the application of the purchase-money arising from a sale, under the Act, of a lease for years, or of a reversion expectant on such a lease.

A. This section provides that the trustees or the Court may, notwithstanding anything in the Act, require and cause the same to be laid out, invested, and accumulated in such manner as in the judgment of the trustees, or the Court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest or reversion in respect whereof the money was paid, or as near thereto as may be.

Q. Trustees having a power of sale over a settled estate with the consent of the life tenant in possession, are asked by him to sell the coal under part of the estate separately from the surface. You are requested to advise them if they can, under any circumstances, comply with his wish.

A. Yes, they may under the Confirmation of Sales Act, 1862, obtain leave to do so on applying to the Chancery

Division in a summary way (25 & 26 Vict., c. 108). Or the tenant for life may himself sell under the Settled Land Act, 1882 (sec. 17).

Q. State briefly the provisions contained in the Settled Land Acts relating to settlements by way of trust for sale.

A. By sec. 63 of the Settled Land Act, 1882, any land which under any instrument, whenever made, is subject to a trust or direction for sale, and for application of the purchase money or income for the benefit of any person for life or any other limited period, shall be deemed settled land, and the instrument a settlement; and the beneficial owner for the time being of the income shall be deemed tenant for life, and shall have all the powers given by the Act to a tenant for life; and the persons who are trustees for sale or have power to consent to, approve or control a sale, are trustees for the purpose of the Act. By sec. 56 the consent of the tenant for life was needed to enable the trustees to exercise any powers under the settlement, which embraced any objects which are within the powers given by the Act to the tenant for life. It was decided that the tenant for life's consent to a sale by the trustees was not needed where it was the positive duty of the trustees to sell, but was needed where the trustees had a discretion (Taylor v. Poncia, 25 Ch. D., 646). By sec. 6 of 47 & 48 Vict., c. 18, no consent, which is not required by the settlement, is now necessary to enable the powers given by it to be exercised; and by sec. 7 the powers conferred by sec. 63 *(supra)* are not to be exercised by the tenant for life without the leave of the Court, which may by special order name some one to exercise them, and whilst such order is in force no power under the settlement can be exercised which is dealt with by the order.

Q. What powers have been conferred upon tenants for life, in relation to building grants and building leases, for local and public purposes?

A. In connection with a building sale, grant, or lease, the tenant for life for the general benefit of residents on the

settled land may (1) cause any parts of the settled land to be laid out for streets, roads, paths, squares, gardens, or other open spaces for the use (free or on payment) of the public or of individuals, with sewers, paving, &c., and (2) convey such parts to trustees or a company, or public body for continuous appropriation and maintenance thereof, and (3) execute all necessary deeds. (Section 16 of Settled Land Act, 1882.)

Q. Enumerate the limited owners to whom powers of alienation are given by the Settled Land Act, 1882.

A.[m] The person for the time being beneficially entitled under a settlement to possession of settled land for his life, section 2 (4). [n] Also a tenant in tail; [o] a tenant in fee simple with an executory limitation over; [p] the owner of a base fee; [q] a tenant for years determinable on life, or a tenant *pur autre vie*—not holding merely under a lease at a rent; [r] a tenant for life or years determinable on life, whose estate is liable to cease on any event during the life, or to be defeated by an executory gift over, or is subject to a trust for accumulation; a tenant in tail after possibility of issue extinct; [s] a tenant by curtesy; [t] and a person entitled to income of land under a trust or direction for any life, or until sale of the land, or until forfeiture of his interest, section 58.

Q. State concisely the purposes to which capital money arising under the Settled Land Acts may be applied.

A. (1) Investment on Government securities *or* other securities on which the trustees are, by the settlement, or by law, authorised to invest, *or* in bonds, mortgages, or debentures, or debenture stock of a railway company in Great Britain or Ireland, incorporated by special statute, and having for ten years previous paid a dividend on its ordinary stock or shares; with power to vary. (2) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled estate, or in land tax, tithe rent charge, crown rents, chief rents or quit rents affecting the settled land. (3) In improvements under the Act. (4) In payment for equality of exchange or partition. (5) In buying the seig-

nory of freeholds or the fee simple of copyholds, or (6) the reversion or freehold in fee of leaseholds—subject to the settlement. (7) In buying any fee simple or copyhold lands or leaseholds having 60 years unexpired, with or without minerals. (8) In buying minerals or mining privileges in fee simple, or for at least 60 years. (9) In payment to any absolute owner. (10) In paying costs. (11) In any other way authorised by the settlement. (Section 21; see also sections 34, 36, and 37.)

Q. Explain the methods of appointing original and substituted trustees for the purposes of the Settled Land Acts.

A. They may be appointed either by the settlor or by the Court. Under section 2 (7) of the Act it is provided that the persons, if any, who are for the time being under the settlement trustees with power of sale of settled land, or with power to consent to or approve of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being who are by the settlement declared to be trustees for the purposes of the Act are, for the purposes of the Act, trustees of the settlement. Under section 38, if at any time there are no trustees within the definition of the Act, the Court may appoint trustees.

4.—Estates Tail.

Q. Under a devise of freehold land to two persons and the heirs of their bodies, what estates are created where (a) *such persons can intermarry, and* (b) *where they cannot?*

A. *(a)* An estate in special tail which will descend only to the heirs of their two bodies. As long as A and B live they share the rents and profits equally, on the death of either the survivor is entitled to the whole for life, and on the death of the survivor the heir of their bodies (if they have intermarried) will succeed by descent. *(b)* A and B are ordinary joint tenants for life, on the death of one the survivor takes the whole for life, and on the death of the sur-

vivor the inheritance is severed, and the heir of the body of A, and the heir of the body of B, become tenants in common in tail without further survivorship.

Q. If freehold land be limited to A and B (husband and wife) and C and their heirs, what shares, estates, and interests do A, B and C respectively acquire in the land?

A. If the limitations are in an instrument coming into operation before 1883, A and B as one legal personage and C as another legal personage are joint tenants in fee, and with regard to A and B's rights between themselves they possess a tenancy by entireties. If the limitations are in an instrument coming into operation on or after 1st January, 1883, the result is the same; except as regards the rights of A and B between themselves as to their moiety, which are those of any strangers and not those of tenants by entireties, (In re March, Mander *v.* Harris, 27 Ch. Div. 166; In re Jupp, Jupp *v.* Buckwell, 57 L. J., Ch., 774).

Q. What is the difference between tenant in tail by purchase and tenant in tail by descent? If a strict settlement be made of real estate, and a power of management is given to trustees during the minority of any tenant for life, or in tail, in possession, is the power bad to any and what extent, and why?

A. The former acquires the lands otherwise than by descent, *e.g.*, by purchase, devise, or settlement; the latter acquires his estate by descent as heir-at-law of the purchaser. The power of management is altogether void; because it may exceed the rule against perpetuities reckoned from the creation of the power—*e.g.*, if, on the death of the tenant for life, the first tenant in tail by purchase is aged 12 and dies at 20, leaving a son aged one year tenant in tail by descent, who ultimately attains 21; here, if the power were good, it would extend for 28 years after the death of the tenant for life. (See Cadell v. Palmer, and Notes, Indermaur's Conveyancing and Equity Cases, 23.)

Q. What is a tenant in tail after possibility of issue extinct? Can he bar the estate tail? Give your reason.

A. He is the owner of an estate in tail special (*i.e.*, to him and the heirs of his body by a particular wife) where the particular wife is dead without issue. He is expressly restricted from barring the entail by 3 & 4 Wm. 4, c. 74, sec. 18. But he has the powers of a tenant for life under the Settled Land Act, 1882.

Q. What difference is there in the effect of a limitation to a man and his heirs male when contained in a deed, and when contained in a will? Explain the reason.

A. In a deed, a fee simple will be created, for there are no words of procreation; in a will, however, such words will create an estate in tail male, on account of the guiding rule that the intention shall be observed.

Q. Land was limited to A and his heirs by B, his wife. B having died without issue, can A sell the fee simple?

A. In a deed this would be construed as passing a fee simple, so that A would always have full power of disposition. In a will, however, the intention of the testator is to be observed, and it would be construed as an estate in special tail, and after B's death, without issue, A being tenant in tail after possibility of issue extinct, could not in any way bar the entail if it still subsisted, and therefore could not sell the fee simple—except under the Settled Land Act, 1882, under which he is a tenant for life.

Q. A being tenant for life with remainder to B in tail, under one instrument, what power has B over the estate, first, with A's consent; and, secondly, without it?

A. During the continuance of A's life estate, B can only completely bar the entail with his consent as protector. If B does not get A's consent, though B can bar his own issue, he cannot bar the remainders over, and will create what is known as a base fee.

Q. By marriage settlement freehold lands were limited to A for life, remainder to his first and other sons successively in tail male, remainders over; and copyholds were surrendered to trustees, their heirs and assigns, and leaseholds were

assigned to trustees, their executors, administrators, and assigns, upon trusts corresponding with the uses of the freeholds. A is dead, and his first son B, having attained majority, wishes to acquire absolute interests in the whole property. How can this be done?

A. As to the freeholds, B must execute a disentailing deed, and enroll it in the Chancery Division within six months after execution; he will thereby acquire the absolute fee simple in possession. As to the copyholds, (1) if the custom of the manor permits entails, B can bar the equitable entail by surrender or deed enrolled, and so acquire the absolute estate; (2) otherwise, he has an estate analogous to the old fee simple conditional, and can only acquire the absolute ownership by alienation during the life of his issue. As to the leaseholds, he is absolute equitable owner of them, for words which create an estate tail in freehold give the absolute ownership of personalty.

Q. What is a base fee, and how may it be enlarged into a fee simple absolute?

A. A base fee is one to exist only whilst a certain qualification is attached to it, and the term is particularly applied to the estate which a tenant in tail in remainder creates who bars the entail without the consent of the protector. Such an estate as this may be enlarged into a fee simple absolute (1) by the execution of a new disentailing assurance, with the consent of the protector; (2) by the execution of a new disentailing assurance when the estate tail becomes an estate in possession; (3) by the base fee and the ultimate limitation in fee simple becoming vested in the same person; and (4) by lapse of time under the Statutes of Limitations (37 & 38 Vict., c. 57, sec. 6).

Q. What powers of sale and leasing belong to a tenant in tail in possession and a person entitled in possession to a base fee?

A. Under sec. 58 of the Settled Land Act, 1882, both of these parties have the powers of a tenant for life under that

Act, viz., full power of sale, and a power of leasing, 99 years for a building lease, 60 years for a mining lease, and 21 years for any other lease. Also under the 3 & 4 Wm. 4, c. 74, there is a power of leasing for 21 years. These powers may be exercised without barring the entail.

5.—Devolution on Death.

Q. State the rules of descent of an estate in fee simple where the last purchaser leaves issue, and define "last purchaser." When does land, of which a man died seised, descend on his father, and when does it descend on his eldest brother?

A. See the rules set out in Williams' Real Property. The rules specially asked for are 1, 2, 3, 4, and 7, but rules 5, 6, 8, and 9 should be considered also to make the answer complete. The last purchaser is the person who last acquired the lands otherwise than by descent, or by escheat, partition or inclosure (3 & 4 Wm. 4, c. 106, sec. 1). When the issue of the purchaser fail, the lands descend upon his father; and if the father is dead, or if he succeeds and then dies without disposing of the lands, they go to the purchaser's eldest brother.

Q. State the alterations introduced by the Act for the amendment of the Law of Inheritance as to tracing descent from the purchaser and the admission of the half-blood.

A. Under this Act (3 & 4 Wm. 4, c. 106), instead of the old rule *seisina facit stipitem*, the rule now is that the descent is to be traced from the last purchaser, *i.e.*, the last person entitled otherwise than by descent, escheat, partition, or enclosure. With regard to the half-blood, they formerly could not inherit, whereas, under this Act, they now inherit (*a*) next after a kinsman of the whole blood and the issue of such kinsman, when the common ancestor is a male, and (*b*) next after the common ancestor, when the common ancestor is a female.

Q. A bought freehold land, and died intestate, leaving a widow and an only child, a daughter. The widow married again and had a son by her second marriage. The daughter has died an infant and without having married, leaving her mother, her half brother, and a paternal first cousin surviving her. To whom does the land belong, and for what estates?

A. The descent is to be traced from A as "the purchaser" (rule 1); the daughter took by descent and did not break the line of descent; A's issue being extinct, recourse must be had to his lineal ancestor (rule 5), who was his father (rule 6), and who is represented by his lineal descendant, the child of A's brother or sister and first cousin to A's daughter (rule 4). The first cousin, therefore, takes the land, subject to the widow's right to dower, unless that is barred.

Q. Land descended on A from his mother; he settled it upon himself for life, with remainder to his first and other sons successively in tail, with remainder to his own right heirs. He died a bachelor, and intestate. Is his heir to be traced through his father, or through his mother, and why?

A. Through his father, because the settlement broke the line of descent, and constituted A "the purchaser" (3 & 4 Wm. 4, c. 106, sec. 3), and as A has no issue, the descent is traced through A's nearest lineal ancestor, who is his father. (Rules 5 and 6.)

Q. What is the difference in the mode of descent between an estate in fee simple and an estate in fee tail? Can leaseholds be entailed?

A. The descent of an estate tail is regulated by the first four rules of descent only; the person to whom the estate tail was granted is (and always has been) the root from which to trace its descent; it can only descend *per formam doni—i.e.*, strictly to the lineal issue of the grantee in tail, and it ceases when they are exhausted. A fee simple descends according to the nine rules of descent laid down by 3 & 4 Wm. 4, c. 106, and 22 & 23 Vict., c. 35; and can devolve on ancestors

and collaterals as well as on issue of the purchaser, and, on failure of his heirs, descends as if the person last entitled had been the purchaser, and ultimately in default of his heirs, escheats to the Crown. Leaseholds cannot be entailed, a gift of a term of years to A and the heirs of his body will make A the absolute owner; they can, however, be assigned to trustees upon similar trusts to those of a strict settlement of realty, with a proviso that they shall not vest in any tenant in tail by purchase until he attains twenty-one.

Q. What are the different modes of descent of lands held in common socage, gavelkind, and borough English respectively?

A. The descent of common socage or ordinary freeholds is as stated in the preceding answer. And the descent of gavelkind and borough English lands follows the same rules so far as those rules are consistent with the peculiar customs of either tenure; for example, in both tenures, the descent goes to males before females, to lineal heirs before collateral heirs. In gavelkind, by special custom, all the sons inherit equally, and this rule applies to collaterals. In borough English the youngest son inherits, but this rule does not apply to collaterals.

Q. Tenant in fee of some, and in tail male in possession of other, common socage and gavelkind lands, died in 1878 *intestate, leaving a widow and the following issue: Two daughters of his deceased eldest son, two sons, and a son of his deceased daughter. Who are entitled to the lands, and for what estates and interests?*

A. The fee simple socage lands descend to the two daughters of the deceased eldest son, as coparceners (rules 1, 2, 3, and 4); the fee simple gavelkind lands descend to the two living sons and to the two daughters of the deceased son they taking *per stirpes*, as coparceners (the same rules varied by the custom of gavelkind); the entailed socage lands descend to the elder of the two living sons, the daughters of the deceased son being excluded by the limitation in tail male

(the same rules); the entailed gavelkind lands descend on the two living sons as coparceners in tail male (the same rules varied by custom and limitation).

Q. Tenant in tail general died in 1880, *leaving issue only three daughters—Mary, Eliza and Jane. Mary died in* 1883, *leaving a husband and an only son. Eliza died in* 1884, *a spinster. There has been no disentail. Who are now entitled to the land, and in what shares, and for what estates?*

A. Mary, Eliza, and Jane took as coparceners in tail general (rules 1, 2, 3). On Mary's death, her share descended to her son in tail general (rule 4), subject to her husband's life estate by curtesy. On Eliza's death, her share descended on her sisters Mary and Jane as coparceners in tail general (rules 1, 2, 3), but Mary being then dead, her share went to her son in tail general (rule 4), freed from curtesy.

Q. A married woman, tenant in tail in possession, dies leaving a husband and an only son; what estates in the land do the husband and son respectively take, and what estates can either of them convey to the other, and by what means?

A. The husband takes a life estate as tenant by curtesy, and the son takes an estate tail subject to that life estate. The husband can by deed surrender his life estate to the son, so as to merge it and accelerate the estate tail into possession. The son can (if 21) bar the entail with the consent of the protector of the original settlement (if any), or without such consent, and so acquire either a fee simple absolute or base fee as the case may be; and he can then convey that estate by any ordinary conveyance to his father, and so merge the life estate in the fee. The father also has the powers of a tenant for life under section 58 of the Settled Land Act, 1882, and can sell and convey the fee simple to the son under that Act, the result being that the life estate of the father and the estate tail in remainder of the son would attach to the purchase-money and the lands be freed.

Q. (1) *What kinds of chattels are descendible to the heirs,*

and (2) *how may chattels in other cases be made to follow the limitations of a settlement of land?*

A. (1) Title deeds; heirlooms in the strict sense; fixtures; chattels vegetable, not being emblements; and animals *feræ naturæ* unless a special property has been acquired in them. (2) By giving them to trustees with a declaration that they shall hold the chattels upon trusts corresponding with the uses in the settlement of land, with a proviso that the chattels shall not vest absolutely in any tenant in tail by purchase until he attains 21, but upon his death under that age shall devolve as the settled lands do.

Q. State the general effect of the rules by which the succession to the residue of an intestate's personal estate is regulated.

A. The widow takes half if no children, and a third if a child or children; and, subject to her share, the children take the whole equally between them, and if any child has died leaving issue such issue always take the parent's share *per stirpes*, (*In re* Natt, *Law Students' Journal*, March, 1888.) Failing children, the father of the deceased takes. Failing a father, the mother, brothers and sisters of the deceased take equally, and if any brother or sister is dead leaving issue, the issue take the parent's share *per stirpes* if any of the prior class (*i.e.*, a brother or a sister or the mother) are living. No representation is allowed after brothers' and sisters' children. Beyond the above details it is simply a question for enquiry as to who are the nearest next-of-kin.

Q. A died intestate and childless, and without leaving father or mother, but leaving a widow, a half-brother, and two nephews, the children of his only sister of the whole blood deceased. He never had any other brother or sister. Who are entitled to his real and personal estate respectively, and for what interests, and in what shares?

A. Subject to the widow's dower, if not barred, the real property goes to the elder of the two nephews absolutely (rule 7). And the personalty goes as to one moiety to the

widow, and as to the other moiety half goes to the brother of the half blood, and the other half equally between the nephews, taking *per stirpes*.

Q. A died intestate, leaving his father, a widow, and a child. B died intestate, leaving several children, but no father, mother or widow. C died intestate leaving no child or representative of one, but a widow and a father. D died intestate leaving no child or representative of one, no father or mother, but a widow and several brothers and sisters. State between whom, and in what shares, the several personal estates of A, B, C, and D are divisible.

A. (1) One-third of A's personalty goes to his widow and the remainder to his child. (2) B's personalty is divided equally amongst his children. (3) C's personalty is divided equally between his widow and father. (4) Half of D's personalty goes to his widow and the other half equally between his brothers and sisters. (22 & 23 Charles 2, c. 10; 1 James 2, c. 17, sec. 7.)

Q. A man dies intestate leaving real and personal estate, a widow, and no relative by blood. To whom, and in what shares, does his property belong?

A. Subject to his widow's dower (if not barred) his real estate escheats to the Crown, whether it is legal or equitable, corporeal or incorporeal (47 & 48 Vict., c. 71, sec. 4). The widow takes half the personalty, and the other half goes to the Crown as *bona vacantia*.

Q. A man died intestate without child or father, but leaving his wife, his mother, two brothers, three sisters, and ten nephews and nieces him surviving. Who are entitled, and in what shares to his personal estate?

A. The wife takes a moiety, and the remaining moiety is divided equally between the mother, brothers, and sisters, the ten nephews and nieces taking *per stirpes* the share to which their deceased parent would have been entitled.

Q. Freehold land was limited to the use of A in tail male, remainder to B in fee. B by his will devised all his real estate

to A. If, under these circumstances, A dies intestate leaving issue only a son, what estate will the son take? If A dies intestate leaving only a daughter, what estate will the daughter take? In either case will A's widow be dowable?

A. The estate tail does not merge in the remainder in fee because of the Statute *De Donis*. (1) The son, therefore, takes an estate tail male, with a remainder in fee simple, as heir-at-law of his father the purchaser. (2) The estate tail is extinct, as A the purchaser has no male issue; the daughter, therefore, takes a fee simple absolute in possession by descent from A. (3) In both cases A's widow is entitled to dower, if it is not barred.

Q. A purchases land and dies intestate, leaving a wife, son and daughter. His property comprises lands held in fee simple, in tail general, pur autre vie, *and for terms of years. In whom do these properties vest?*

A. The fee simple lands go absolutely to the son, subject to dower (if not barred); the tail general lands go to the son as tenant in tail by descent, subject to dower (if not barred); the estate *pur autre vie*, if granted to the deceased and his heirs, will go to the son as special occupant, but if merely granted to the deceased will go to the deceased's administrator as part of his personal estate (1 Vict., c. 26, secs. 3 & 6); and the terms of years pass to the deceased's administrator as part of his personalty. Until an administrator is appointed, the personalty vests in the President of the Probate Division.

Q. A testator died in 1883 *having by his will, dated in the same year, bequeathed a share in his residuary estate to trustees, upon trust to pay the income to his daughter for life, and after her death for her children equally. The daughter died in* 1885, *having had three children only—namely, John, who died in the testator's lifetime leaving issue; Henry, who survived the testator and died in his mother's lifetime leaving issue; and Jane, who is living, an infant, and married. Advise the trustees as to the distribution of the fund.*

A. I should advise the trustees that neither John nor his issue took anything, for though 1 Vict., c. 26, sec. 33, provides that there shall be no lapse in the case of a gift to a child or other issue of the testator who dies leaving issue, yet it has been held that this provision does not apply to a bequest to children as a class (Brown v. Hammond, 1 Johns, 210; Goodeve, 337.) I should advise them that Henry took half, and to enquire whether he had left a will, and if not as far as it is personalty letters of administration must be taken out, and as far as realty it will go to his heir. I should also advise them that Jane took the other half, but she being an infant it cannot be paid over to her, and a guardian should be appointed. (See Viner v. Francis, Indermaur's Conveyancing and Equity Cases, 37.)

Q. Explain the meaning of the term Hotchpot.

A. Hotchpot appears to have originally meant a pudding, as being composed of things mixed or placed together; it was applied, as regards lands held in the obsolete tenure of frankmarriage, to prevent the owner of such lands taking any share as a coparcener on the death of the ancestor from whom the lands were derived, without bringing those lands into the common lot; under the statute for the distribution of the personalty of intestates, it is used to prevent any child taking a larger share than he or she would be entitled to if the advances made during the deceased's life were taken into account; and it is commonly incorporated into a settlement of personalty to prevent any child, to whom a share is appointed, claiming to share in the unappointed part without bringing the appointed share into account.

6.—Ownership.

Q. Define an estate in severalty, joint tenancy, and tenancy in common.

A. An estate in severalty is held by a man in his own right only without any other person being joined with him in

interest during his estate. A joint tenancy is where an estate is acquired by two or more persons in the same property, by the same title (not being descent), at the same time, and without words importing that they are to take distinct shares. A tenancy in common is where two or more persons hold the same land with interests accruing under different titles, or under the same title (not being descent) but at different periods, or conferred by words of limitation importing that they are to take in distinct share. (1 Stephen's Commentaries.)

Q. How did a tenancy by entireties arise, and what were its incidents? Can it arise now?

A. It arose by a gift to two persons, who were husband and wife, and their heirs. The husband took the rents and profits during his life, but could not dispose of the inheritance without his wife's concurrence. Unless they both agreed in making a disposition, each of them ran the risk of gaining the whole by survivorship, or losing it by dying first. Such a tenancy cannot now arise in consequence of the provisions of the Married Women's Property Act, 1882 (see *ante*, page 75).

Q. What is coparcenary? Can men be coparceners?

A. Coparcenary is where two or more form a joint heir. Females always inherit as coparceners; but males do so only under the custom of gavelkind tenure.

Q. By which modes may joint tenancy, tenancy in common, and coparcenary, be converted into estates in severalty?

A. A joint tenancy may be severed by partition (voluntary, or compulsory under the Partition Acts, 1868 and 1876); by alienation of his share by any joint tenant by absolute conveyance (which includes a mortgage) without partition, which makes the alienee a tenant in common with the remaining joint tenants; by a deed of release to one joint tenant by the others, which gives him an estate in severalty; by the *jus accrescendi*; and by accession of interest, as, if there be two joint tenants for life and one obtains the inheritance this

severs the jointure. A tenancy in common may be severed by partition (as above stated); or by all the titles and shares being united in one person, either by conveyance or descent. Coparcenary may be severed in the same two ways as tenancy in common, and also by one coparcener alienating her share because that destroys the essential unity of title.

Q. By what words may joint tenancy and tenancy in common respectively be created amongst children? (a) *A father having four children bequeaths his residuary personalty to all his children "equally." One son dies in his lifetime.* (b) *An uncle bequeaths £2,000 to his nephews, A, B and C. A dies in his lifetime. How are the residue and the legacy respectively divisible? Does it in either case make any difference whether the deceased person left issue living at the testator's death?*

A. No technical words are needed, but a gift to children as a class will create a joint tenancy, unless words are used showing that the testator intended each child to take a separate and distinct share. *(a)* This creates a tenancy in common, because of the word "equally," but only the children living at the testator's death will take. (See Brown v. Hammond, *ante*, page 85.) *(b)* The £2,000 legacy creates a joint tenancy, and must be divided between B and C, A's share lapsing. It makes no difference in either case that the deceased person left issue living at the testator's death.

Q. Residue consisting of freeholds and leaseholds was devised to trustees upon trust to allow A to receive the rents for her life, and after her death to sell and divide the proceeds equally between the testator's nephews, B, C, D, and E, and their respective executors, administrators and assigns. B died in the testator's lifetime. C died in A's lifetime A is dead, and all the property has been sold in one lot for £8,000. Who are entitled to the money and in what proportions?

A. This is a gift to B, C, D, and E as tenants in common. B's share lapses and goes to the heir and next-of-kin of

testator according to proportion of realty and personalty. C's interest, however, was vested immediately on testator's death, and will go to his representatives, or according as he has dealt with it. D and E take their shares.

Q. (a) *How should a limitation to three persons as tenants in common in fee, and another to three persons as joint tenants in fee, be framed? State the course of descent in each case.* (b) *It being a rule of the Common Law that the estate of joint tenants must arise at the same time, state what exceptions have been established to this rule?* (c) *What is the proper form of assurance between joint tenants, and why? And between tenants in common, and why?* (d) *How can a partition be obtained between joint tenants, or tenants in common, when the parties interested cannot agree upon one?*

A. *(a)* Some words must be used to indicate the intention that the grantees are to take distinct shares, otherwise the limitation will be treated as creating a joint tenancy. The limitations should be to X, Y and Z, as tenants in common in fee; and to X, Y and Z as joint tenants in fee, or simply to X, Y and Z and their heirs. Under the tenancy in common, the descent of each tenant's undivided share is traced from him as purchaser by the ordinary rules of descent; but so long as the joint tenancy exists, the *jus accrescendi* determines the descent, so that the ultimate survivor will take the whole, and the descent will then be traced from him as purchaser. *(b)* The exceptions are; (1) Where the estates take effect under the Statute of Uses, *e.g.*, if A limits lands to the use of himself and his future wife for life, and afterwards marries, they are joint tenants for life; (2) devises, which stand on the same footing as uses; and (3) bequests. *(c)* Between joint tenants, a deed of release which operates to extinguish a right, for each joint tenant of a freehold estate is already seised of the whole land; but between tenants in common a conveyance is necessary, for each tenant has a separate title, is seised of an undivided and certain share, and therefore has to convey that share.

(d) By any of the tenants bringing an action for partition in the Chancery Division, or, if the property does not exceed £500 in value, in the local County Court; or by application to the Land Commissioners for England to make orders for partition under their hands and seals. In a partition action, the Court (1) may direct a sale and division of the proceeds at its discretion, (2) may direct a sale on application by any interested party unless the other parties will agree to buy his share, and (3) must direct a sale if parties interested to the extent of a moiety request it, unless it sees good reason to the contrary (31 & 32 Vict., c. 40; 39 & 40 Vict., c. 17).

7.—Future Estates and Interests.

Q. What is the difference between a reversion and a remainder?

A. A reversion is the residue of an estate left in the owner of property after he has granted out a smaller (particular) estate than he himself possesses; whilst a remainder is where, by the same instrument that creates the particular estate, the whole or part of the reversion is granted out to take effect in possession after the particular estate. A reversion arises by act of the law, a remainder by the act of the parties. Tenure exists between the owner of the particular estate and the owner of the reversion, but not between the owner of the particular estate and the remainderman.

Q. In what respects do executory interests created by will correspond in their incidents with springing and shifting uses?

A. In that by their means a future estate may be made to spring into existence after a fee simple, arising of its own inherent strength, and being in its nature indestructible. Generally the rules as to executory interests apply to all limitations coming in under that denomination, including for instance the rule against perpetuities.

Q. Define a vested remainder, a contingent remainder, and an executory interest?

A. A vested remainder is one which is necessarily capable of taking effect whenever the particular estate on which it is dependent comes to a termination, *e.g.*, grant to A for life, remainder to B and his heirs. A contingent remainder is one where, from some uncertainty affecting itself, either as to the person intended to take or the happening of the event on which it is to take effect, the remainder itself is in a state of contingency, *e.g.*, a grant to A for life with remainder to the son of B, a bachelor, or a grant to A for life, remainder to B for life, remainder in case B dies before A to C for life. An executory interest is a future estate, arising of its own inherent strength when the time comes, and not depending for protection on, or waiting for the determination of, a prior estate, but on the contrary, often putting an end to a prior estate; it is created (1) by deed under the Statute of Uses, when it is called a springing or shifting use, or (2) by will, when it is termed an executory devise.

Q. Explain the necessity which formerly existed for trusts to preserve contingent remainders.

A. Because in the absence of such trusts, if the particular estate ended by forfeiture, surrender, or merger, before the contingent remainder was ready to vest, such contingent remainder failed, as it had no particular estate to support it. 8 & 9 Vict., c. 106, did away with the necessity for such trusts.

Q. State the rules as to the creation and failure of contingent remainders, and the changes in the law made by 8 & 9 *Vict., c.* 106, *and* 40 & 41 *Vict., c.* 33.

A. (1) There must be a particular estate to support the remainder; (2) the particular estate and the remainder must have been created by the same instrument; (3) the remainder must be limited to take effect directly the particular estate ends; (4) if the contingent remainder is freehold, the particular estate must be freehold; (5) the contingent remainder must vest before or at the determination of the par-

ticular estate; (6) there can be no remainder to an unborn person for life followed by a remainder to the issue of such unborn person, unless where the limitations are in a will and the remainder to the issue is an estate tail, in which case, by the *cy pres* doctrine, the Courts allow the first unborn person to take an estate tail. The three first rules apply to vested remainders as well. The two statutes have in most cases but not in all, done away with rule 5, by which the contingent remainder fails unless the contingency has been complied with before the particular estate determines. 8 & 9 Vict., c. 106, section 8, enacts that where the particular estate determines by forfeiture, surrender, or merger, before the contingent remainder is ready to vest, such contingent remainder shall not fail under rule 5, but shall take effect if it is ever capable of doing so. 40 & 41 Vict., c. 33, enacts that where a contingent remainder, created by instrument executed since 2nd August, 1877, fails because it is not ready to vest when the particular estate determines (*i.e.*, because of rule 5), such remainder shall still be capable of taking effect, provided it would have been good originally as an executory interest (*i.e.*, could not infringe the rule against perpetuities) if there had been no particular estate to support it as a remainder. (See illustrations in four next answers.)

Q. Lands were limited unto and to the use of trustees in fee, in trust for A for life, with remainder to his first and other sons who should attain the age of 21 years successively in tail male. A died leaving several infant sons, but no son who had attained 21. Would the contingent remainder to his sons fail, and if not, why not?

A. It would not fail; because the legal estate in fee is given to the trustees and the limitations are of equitable estates only, to which the Common Law rule 5 in the preceding answer never applied, and the limitations to the sons will take effect quite irrespective of 40 & 41 Vict., c. 33, in favour of the sons who live to attain 21. (*Re* Finch, Abbiss v. Burney, 17 Ch. D., 211; 50 L. J., Ch., 348.)

Q. A testator wishes to devise his freehold farm to his nephew, a bachelor, for life, with remainder to the nephew's first son who shall attain 25. What danger is there of the gift to the son failing, and how can it be avoided?

A. The nephew being a bachelor, this is a contingent remainder, and liable to fail by the nephew dying before he has a son of that age. The danger could only be avoided by the giving to some other person of a further particular estate, so as to insure (if possible) that the contingent remainder shall vest before all the particular estates determine. The limitation would be void as an executory interest for exceeding the rule against perpetuities, and 40 & 41 Vict., c. 33, would not here assist. (See Brackenbury v. Gibbons, 2 Ch. D., 417.)

Q. Land is conveyed to A for a term of 20 years, with remainder, if B shall survive the term, to B in fee. Is the remainder good, or bad, and why?

A. The limitation to B is a contingent remainder of an estate of freehold; it, therefore, requires a particular estate of freehold to support it and as there is no such estate, the contingent remainder is void.

Q. (a) *Upon the marriage of A, a bachelor, lands were settled upon him for life, with remainder to his eldest son for life, with remainder to the first son of such eldest son in fee. Which of the above limitations would be valid, and which void, and why?* (b) *Lands were devised to A, a bachelor, for life, with remainder to his eldest son for life, with remainder to the first and other sons of such eldest son successively in tail. What would be the effect of that limitation, and why?*

A. *(a)* The limitations to A for life and to his eldest son for life are good; but the further limitation to the son of the eldest son in fee is void, because it infringes the last rule for the creation of contingent remainders. *(b)* The limitation to A for life is good, and the remaining limitations are construed by the *cy près* doctrine as giving an estate tail to A's eldest son. (As to both, see *ante*, page 91.)

Q. What is meant by a vested estate subject to being divested?

A. An estate vested in any person but liable to be overreached and brought to an end by means of an executory limitation: *e.g.*, where lands are given to A and his heirs to such uses as B shall appoint, and in default of and until appointment to C and his heirs, here C has a vested estate in fee simple in possession, of which, however, he may be divested (in all or in part) by B exercising his overriding power of appointment.

Q. Explain the meaning of the following terms:—"Possibility of reverter." "Contingency with a double aspect."

A. *Possibility of reverter* signifies the chance of the lord of the fee getting back the lands granted either by forfeiture or by escheat. A *contingency with a double aspect* is the alternative limitation of two interests, *e.g.*, a limitation to A for life, and, if A leave a son, to that son in fee, but, if A leave no son, to A's daughter in fee; and is valid despite the rule that there can be no remainder limited after a fee simple, for the second contingent remainder is not limited after, but is in substitution for, the former.

Q. A testator bequeathed a legacy to B, to be paid when he attained the age of 21 years; a legacy to C, payable three years after his (the testator's) death; a legacy to D, if he attained 21; a legacy to E, at the age of 21; a legacy to F when he attained 21, with a direction that interest at 5 per cent. on the last-mentioned legacy should in the meantime be applied for the benefit of F; and, lastly, a legacy to G at the death of the testator's wife; and made his wife residuary legatee. B, D, E, and F respectively died under the age of 21 years; C died three months after the testator; and G died in the lifetime of the testator's widow. Which of the legatees took vested interests in their legacies, and which did not?

A. The legacy to B, vested at testator's death, for the time of payment only was postponed, the gift being a present one, and B's next-of-kin will get the legacy. C's legacy also

vested and goes to his personal representative for the same reason. The legacies to D and E did not vest, but were given contingently on their respectively attaining 21; both legacies, therefore, pass to the testator's widow as residuary legatee. F's legacy is saved from the fate of those to D and E by the gift of interest until the contingency happens, which makes the legacy a vested one, and consequently it passes to F's legal personal representative in trust for his next-of-kin. G's legacy is vested at testator's death, and the time of payment only is postponed. (Hanson v. Graham, Indermaur's Conveyancing and Equity Cases, 47.)

Q. A fund was bequeathed to A for life, and after his decease to the children of B in equal shares. B had five children, three born in A's lifetime, and two after A's death; but one of the children born in A's lifetime died an infant before A's death. Who, upon A's death, would be entitled to the fund, and why?

A. The fund is divided equally amongst the three children born in A's lifetime, the deceased child's share passing to his next-of-kin. One of the rules for construing testamentary gifts to children is that where a particular interest is carved out (here, A's life interest), with a gift over to the children of any person, such gift over embraces all the children who come into existence before the period of distribution (A's death). (See notes to Viner v. Francis in Indermaur's Conveyancing and Equity Cases, 37.)

Q. State the rule in Shelley's case. Do you know the reasons for the rule? Does it apply to wills as well as to deeds?

A. Where the ancestor, by any gift or conveyance, takes an estate of freehold, and by the same gift or conveyance an estate is limited, either mediately or immediately, to his heirs in fee or in tail, the word "heirs" is a word of limitation and not of purchase, *i.e.*, marks out the estate taken by the ancestor and gives nothing directly to the heirs. The reasons for the rule appear to be three—(1) The two limita-

tions virtually accomplished the same purposes as a gift of the inheritance to the ancestor, and therefore the law construed them as such a gift, so as to avoid the injury sustained by the claims of the lord and the specialty creditors of the ancestor being fraudulently evaded; (2) a desire to facilitate alienation, by vesting the inheritance in the ancestor instead of keeping it in abeyance till his death; (3) the carrying out of the primary intention that the ancestor should enjoy the estate for his life and, subject thereto, it should descend to his heirs, by sacrificing the secondary intention that the ancestor should have a life estate only, and that his heirs should take by purchase. (Smith's Compendium, 6th edition, page 181.) The rule is applied to limitations in wills, except where its application would clearly have a result contrary to the intention of the testator as expressed in the will itself.

Q. What difference is there between a limitation to A for life, with remainder to the heirs male of his body, and a limitation to A for life with remainder to his first and other sons successively, and the heirs male of their respective bodies?

A. In the first case A takes an estate tail male under the rule in Shelley's case; in the second case only a life estate, and his son an estate tail male.

Q. John Styles, on the marriage, in 1870, *of his second son William, settled a freehold farm to the use of himself for his life, with remainder to the use of his son William for his life, with remainder to the use of William's first and other sons successively in tail, with remainder to his own right heirs. He died in* 1878 *leaving his eldest son Richard his heir-at-law, and his widow Mary his universal devisee, both of whom are alive. William died childless in* 1885. *Who is entitled to the farm?*

A. By virtue of the settlement, John Styles took a fee simple under Shelley's case, subject to the remainders to William for life, and William's sons in tail. There is now only remaining the fee simple, and that passed under John Styles' will. The widow Mary, therefore, takes as devisee.

Q. Describe the various methods by which an executory interest may be created?

A. By deed operating under the Statute of Uses, in which case it is either a springing or a shifting use; or by will, when it is called an executory devise.

Q. What limits are imposed by law on the creation of future estates and executory interests?

A. Down to the time of the Statute of Uses under the rules of Common Law a future estate could only be limited by way of remainder on an antecedent particular estate, for, under the feudal system, it was essential that the tenancy should always be full, and that there should be an open transfer of property by livery of seisin, and the ordinary rules as to vested and contingent remainders applied. The Statute of Uses enabled future estates to be created by means of springing and shifting uses. The rule as to the creation of a remainder is that it cannot be given to the child of an unborn person. The rule as to executory interests is that they must arise within a life or lives in being and twenty-one years afterwards.

Q. What is meant by the rule against perpetuities? A legacy of £10,000 is left by will to trustees upon trust to pay the income to the testator's daughter during her life, and, at her death, upon trust for her children who shall be then living, and for such of the children of any who shall be then dead as shall then have attained or shall thereafter attain majority. Is the gift of this legacy valid?

A. This is the rule limiting the creation of executory interests. By it all executory interests must commence within the period of any fixed number of existing lives and an additional term of twenty-one years, allowing further time for gestation where it actually exists. Any limitation of corpus or income by way of executory interest which may transgress this rule is void. (Cadell v. Palmer, Indermaur's Conveyancing and Equity Cases, 23.) The legacy is valid, because the grandchildren of the daughter will obtain vested

interests within twenty-one years of the decease of the daughter, who is the life in being.

Q. Two funds of personality are settled, one upon such trusts as A shall by will appoint, the other upon trust for A's children as he shall by will appoint. A bequeaths both funds to such of his children as shall attain 23 years. State the effect of the rule against perpetuities upon each of these appointments.

A. Under the first settlement A has a general power, the rule against perpetuities is applied from its exercise, and as all his children must attain 23 within the period fixed by the rule, the appointment is good. But as to the second fund A has a special power, the rule is applied from its creation, and, as the appointment may transgress the rule, it is void.

Q. Mention the various periods during which accumulations are allowed by the Thellusson Act (39 & 40 Geo. 3, c. 98), and the cases to which the Act does not apply.

A. Income may not be accumulated for a longer period than (1) the life of the grantor, settlor, devisor, or testator; or (2) twenty-one years after his death; or (3) the minority of any person living or *en ventre sa mere* at such death; or (4) the minority of any person who, if living, and of full age, would be entitled to the accumulations. Where a direction for accumulation exceeds those limits the excess only is void (Griffiths v. Vere, Indermaur's Conveyancing and Equity Cases, 23), unless the period may transgress the rule against perpetuities when it is void altogether (Cadell v. Palmer, Indermaur's Conveyancing and Equity Cases, 23.) Income directed to be accumulated contrary to the Act goes to the person who would have been entitled in the absence of such direction (sec. 1). The Act does not apply to provisions (1) for payment of debts; (2) for raising portions for children; and (3) as to the disposal of the produce of timber or wood—and in these three cases the accumulation may be for the full rule against perpetuities.

Q. A testator, who died in 1837 directed his trustees, out of

the income of his real and personal estate, to pay an annuity to his wife during her life, and to accumulate the rest of the income during her life, and at her death to pay the accumulations to such of his brothers as should then be living. His wife died in 1870, *and two brothers of the testator were then living. How far, if at all, was the direction valid, and to whom did the surplus income from the death of the testator to that of the wife belong?*

A. The direction is good for twenty-one years after the testator's death, and the accumulations during that period will go to the two brothers living at the wife's death in 1870; but the direction is void after the twenty-one years, and the excess income from 1858 to 1870 goes to the persons entitled in the absence of any such direction, *i.e.*, so far as it comes from realty, to the residuary devisee under the will, or the heir-at-law, as the case may be, and so far as it comes from personalty, to the residuary legatee or next-of-kin. (See last answer.)

Q. What restriction has been placed on executory limitations by the Conveyancing Act, 1882, *sec.* 10?

A. That where, under any instrument coming into operation after 1882, any person is entitled to "land" in fee, or for years (absolute or determinable on life), or for life, with an executory limitation over on default or failure of his issue, such executory limitation shall not take effect if any issue capable of inheriting attains twenty-one. (See also next question, and *post*, pages 121, 122.)

Q. A testator, who died in 1883, *devised a freehold farm to A in fee simple; but if A should die without leaving issue living at his death, then over to persons who cannot now be ascertained. A, who has adult children, has sold the farm as absolute owner. The purchaser objects that the title is bad, A's estate being defeasible by his death without leaving issue. Is the objection sustainable, and is the date of the testator's death important?*

A. The objection is not sustainable, because the executory

limitation over in default of issue is in an instrument which came into operation after 1882, and A, on whose death without issue the property is to go over, actually has issue who has lived to attain twenty-one. (Conveyancing Act, 1882, sec. 10.) If the testator had died before 1st January, 1883, the objection would have been fatal.

Q. What is a power? How do the estates created under a power take effect with respect to the settlement which contains the power?

A. *(a)* A power in its widest sense is an authority. With regard to real estate, a power may be defined as the means of causing a use, with its accompanying estate, to spring into existence at the will of a given person. Powers may be either common law powers, equitable powers, statutory powers, or powers operating under the Statute of Uses. There are also general powers and special powers; powers appendant, in gross, and collateral; and special powers may be either exclusive or non-exclusive. *(b)* As if such estates had been actually limited in the settlement itself.

Q. Define a general and a limited power of appointment. How are appointments thereunder affected by the rule against perpetuities?

A. A general power is one that may be exercised in favour of any one without restriction on the choice of the donee, and the rule against perpetuities applies as from the time when the power is exercised, *e.g.*, if exercised by deed from its execution, or if by will from the appointor's death. A special power is where the donee is restricted to exercise it in favour of specified persons or classes; and here, as the property is really tied up to those special objects from the creation of the power, the donee cannot create any estate which could not have been created by the instrument conferring the power. (See first question on page 97.)

Q. What are the legal requisites for the valid creation of a power?

A. There are three requisites to the valid creation of a

power, namely, (1) sufficient words to denote the intention; (2) an apt instrument; and (3) a proper object. (Sugden, 102.) No technical or express words are necessary to create a power, provided the intention be clear. A power may be created by a deed or will, and in powers operating under the Statute of Uses, the land must be conveyed to uses, and the power is only over the use, though by force of the statute the appointee takes the legal estate. The objects may be of any nature provided the rules of law or equity are not thereby transgressed. Care must therefore be taken in creating a power not to exceed by possibility the limits of the rule against perpetuities. (See Farwell on Powers.)

Q. Explain the distinction between powers and estates, and between powers collateral and those which relate to the land.

A. A power is a bare authority, which confers no ownership but may give an interest to the donee; whilst an estate is actual ownership of property, which, if accompanied by the legal seisin, entitles the owner to possession, and, if an equitable estate, entitles the owner to compel the legal holder to account for the profits. Powers collateral, are powers, operating under the Statute of Uses, given to mere strangers who take no interest in the land; whilst powers relating to the land, are, also, powers operating under the statute, but are given to persons having an estate in the land, and are either appendant, that is, may be exercised during the continuance of that estate, or in gross, that is, can only be exercised after the determination of the estate.

Q. State briefly the principles on which the Courts have dealt with cases of the excessive execution of powers.

A. Where there is a complete execution of the power and something *ex abundanti* added which is improper, the execution is good, and the excess only void; but where there is not a complete execution of the power, where the boundaries between the excess and the execution are not distinguishable, it will be bad.

Q. Enumerate and classify the different kinds of powers of sale.

A. (1) Common Law powers, which take effect apart from the Statute of Uses. Thus, a direction in a will that X, who takes no estate in lands, should have a power of sale over them, would be a Common Law power, to be carried out by bargain and sale in exercise of a Common Law authority. The power given by the Settled Land Act, 1882, to a tenant for life to sell and convey, is an analogous power. All powers over personalty come under this head, as the Statute of Uses has no application to personalty. (2) Equitable powers, *e.g.*, the power of sale in a mortgage deed. (3) Powers operating under 27 Henry 8, c. 10, which may be either collateral or relating to the land (appendant or in gross).

Q. What is a power of attorney? How should a deed executed under such a power be signed? Is a deed so executed necessarily, or in any and what cases, invalidated by the previous death of the principal?

A. A power of attorney is a power or authority under seal given by one person to another to do a certain thing or to act generally for him, *e.g.*, where one goes abroad. A deed executed under such a power had formerly to be executed in the name of the giver of the power; but now the attorney may execute the deed in his own name (44 & 45 Vict., c. 41, sec. 46). Formerly a deed executed under such a power would be of no effect if the principal were already dead or the power revoked; but if the power of attorney was created after 1882, and was (1) given for value and expressed to be irrevocable, or (2) in any case expressed to be irrevocable for a period not exceeding a year, which period had not expired at the time of execution, the death or revocation of the principal makes no difference to the power. (45 & 46 Vict., c. 39, secs. 8 and 9.)

Q. Explain the doctrine of "Cy près," and state the classes of cases and properties to which it is applicable.

A. The principle of the doctrine is that where a testator

has two objects, one primary or general, and the other secondary or particular, and the latter cannot take effect, the Court will carry out the general object *as near as may be (cy près)* to the testator's intention according to the law. (Wharton's Law Lexicon.) It is applied (1) to real property *devised* to an unborn person for life with remainder to his eldest son and the heirs of his body, by giving an estate tail to such unborn person; (2) to charitable bequests, by carrying out a *general* intention where the particular gift fails; and (3) to personal legacies accompanied by a condition precedent or subsequent, by holding that a substantial compliance with the condition is sufficient where a literal compliance is impossible from unavoidable circumstances without the fault of the legatee.

Q. Explain surrender and merger.

A. *A surrender* is the restoring or yielding up of an estate. It is usually applied to giving up a lease before the term expires, and its effect is to merge the estate of the surrenderor into that of the surrenderee. It may be (1) express, in which case it must be in writing, and if of more than a three years' term, by deed (29 Chas. 2, c. 3, sec. 3; 8 & 9 Vict., c. 106, sec. 3); or, (2) implied by act and operation of law, which is anything that amounts to an agreement by the tenant to abandon, and by the landlord to resume, possession of the demised premises, *e.g.*, delivery and acceptance of keys or creating a new tenancy. A surrender of copyholds is the giving up of the legal tenancy by an admitted tenant to the lord of the manor, either as a relinquishment of his estate, or as a means of conveying it to another. *Merger* is the annihilation by act of law of a particular estate in an expectant estate, consequent upon their meeting in one and the same person in the same right and without any intermediate estate. An estate tail will not merge in the remainder or reversion in fee simple, because of the Statute De Donis. Where tithe rent-charge, and the land out of which the same is payable, belong to the same owner, he is empowered by

statute to merge the tithe rent-charge in the land by deed with consent of the Land Commissioners (6 & 7 Wm. 4, c. 71).

Q. State the rule of law as to merger. (a) *If an estate were limited to A B in tail, with remainder to him in fee, would the rule apply?* (b) *If C D was entitled to a term of years, and then the immediate freehold in the lands descended or was devised to his wife, would the term merge?* (c) *If C D in the case last stated made the freeholder his executor would the term merge?* (d) *If C D's executor purchased the immediate freehold, would the term merge? Give your reasons.*

A. See preceding answer. (*a*) No, the Statute De Donis prevents it. (*b*) Not unless the husband becomes tenant by the curtesy, for until then he has no freehold estate. (*c* and *d*) No, because the executor would not hold the term and the freehold in one and the same right.

Q. (a) *As to land of freehold tenure, what is a surrender?* (b) *Land has been settled on A for 50 years, if he shall so long live, remainder to B for life, remainder to C in tail, remainder to D in fee; which of these estates are, and which of them are not capable of being surrendered, and by what means?*

A. (*a*) The yielding up a smaller estate so as to accelerate another into possession. (*b*) A and B can surrender the term of years and life estate respectively, but C cannot surrender his estate tail, nor D his remainder in fee.

8.—Uses and Trusts.

Q. When was the Statute of Uses passed? What was its object, and what has been its effect in conveyancing? In what case is it necessary, and in what case is it unnecessary to limit a use in conveyance of freeholds?

A. In the reign of Henry 8 (27 Henry 8, c. 10). Its object was to put an end to the practice then existing of conveying land to uses. Its effect, however, in conveyancing has substantially been only to add the words "to the use of"

to conveyances; but, beyond this, it enables various limitations of the use, with its accompanying estate, to be made which could not be made directly of the estate. It is necessary to limit a use where there is either no consideration, or there is more than one person named, and it is desired that one shall take the legal estate, and another the equitable estate; also it is necessary where, in a deed, limitations by way of executory interest are desired.

Q. Distinguish a use from a trust, and trace the history of the distinction.

A. By a use is meant the first use declared, being one which the Statute of Uses operates upon and converts into the legal estate; whilst by a trust is meant a second or subsequent use on which the statute does not operate, but which confers, nevertheless, an equitable or beneficial estate. After the passing of the Statute of Uses it was held in Tyrrell's Case that there could not be a use upon a use; and upon this the Court of Chancery held that an equitable or beneficial estate was created by the subsequent use which is called a trust.

Q. In a conveyance on sale of freehold land the ordinary form of the habendum is "To hold the said premises unto the purchaser and his heirs to the use of the purchaser, his heirs and assigns, for ever." Which of those words are, and which of them are not essential, and why?

A. The words "to use, &c.," are not required, for the purchaser pays a valuable consideration and the preceding part of the habendum is all that is needed. If the conveyance had been voluntary, all the words given above are needed, otherwise there would be a resulting use to the grantor which would revest the legal estate in him.

Q. What difference in effect is there between a limitation in a deed unto and to the use of A and his heirs, and a limitation to A and his heirs to the use of B and his heirs?

A. In the first case A takes the legal and beneficial estate, not by force of the Statute of Uses, for there is no one seised

to the use of another, but he is in by Common Law. In the second case A has nothing, being merely a conduit pipe for passing the estate to B, and B will have a legal and beneficial estate; but B is here possessed of his estate not by the Common Law, but by force of the Statute of Uses.

Q. If land is conveyed by deed to A to the use of B his heirs and assigns, and A dies, what happens?

A. The estate granted to B determines, as only an estate for A's life is passed through A, and the person to whom the use is granted cannot have a larger estate than is passed through the grantee to uses or conduit pipe.

Q. What were the objects and advantages of using the conveyances called a bargain and sale, and a lease and release?

A. The object of a bargain and sale was to enable interests in real property to be transferred without the inconvenience of, and the publicity attendant on, a conveyance by feoffment with livery of seisin. The object of a lease and release was to avoid the necessity of inrolment under 27 Henry 8, c. 16. A bargain and sale prior to 27 Henry 8, c. 10, created a use enforced by a Court of Equity though disregarded by Common Law Courts; the statute turned this use into possession; 27 Henry 8, c. 16, required a bargain and sale of freehold to be by deed, enrolled at Westminster within six months. But as the last-named statute did not apply to a bargain and sale for a term of years, whilst the Statute of Uses did, the practice was adopted of making a bargain and sale for (usually) a year, which gave the lessee the feudal possession without entry, and then executing a deed of release dated on the following day by which the entire fee simple could be passed to the bargainee.

Q. Explain and illustrate— "*Even now a common purchase deed of a piece of freehold land cannot be explained without going back to the reign of Henry 8, or an ordinary settlement of land without having recourse to the laws of Edward 1.*"

A. (1) In a purchase deed the land is conveyed unto and *to the use of* the purchaser. The words in italics were rendered necessary by the Statute of Uses (27 Henry 8, c. 10) in voluntary conveyances to prevent a resulting use of the legal estate to the grantor: and although the valuable consideration renders them unnecessary in the purchase deed, they are always inserted. The Statute of Uses does not really apply to such a limitation, as it only relates to cases where land is conveyed to X to the use of Y; and where the conveyance is unto and to the use of X, X is said to be in by the Common Law. (2) In an ordinary settlement of land, uses are always inserted, which can only be explained by reference to the Statute of Uses; and estates tail are limited to the first and other sons of the marriage, and they can only be explained by reference to the Statute De Donis (13 Edward 1, c. 1) which created them.

Q. Explain the doctrine of Scintilla juris.

A. *Scintilla juris* was a doctrine by which it was contended that, where lands are conveyed to B and his heirs to the use of A and his heirs until some event, *e.g.*, a marriage, and then to the use of C and his heirs, a possibility of seisin remained in B until the event, sufficient to enable C's use to be transmuted into the legal estate when the event happened; it was abolished by 23 & 24 Vict., c. 38, sec. 7, enacting that every use limited by a conveyance shall take effect by force of the seisin originally vested in the grantee to uses, *i.e.*, B.

9.—Alienation Inter Vivos.

Q. Describe a feoffment and its necessary incidents. Has it any peculiar efficacy at the present day? If a feoffment be made to A and his heirs in trust for B and his heirs, what estates do A and B respectively take?

A. A feoffment was the Common Law conveyance used for passing a freehold estate in possession in a corporeal hereditament, and was perfected by livery of seisin (*i.e.*, delivery of the feudal possession) which was either (1) livery

in deed, which took place on the lands, and could be performed by a deputy, or (2) livery in law, which took place within sight of the lands; writing was unnecessary until 29 Car. 2, c. 3, made it so by sec. 1 as to creation, and sec. 3 as to assignment of estates in land: by 8 & 9 Vict., c. 106, it must be by deed after 1st October, 1845, except where made by an infant under the custom of gavelkind; the word "give" was the technical term used in enfeoffing another. The publicity of livery made a feoffment operate by wrong where the owner in possession of an estate granted out a larger interest than he possessed, so as to disseise the lawful owner until he re-asserted his estate by exercising his rights of entry; since 1845 no feoffment can operate by wrong, 8 & 9 Vict., c. 106. The word "give" in a feoffment implied a warranty of title; but since 8 & 9 Vict., c. 106, this is no longer so. A feoffment may still be used, but has now no practical advantage. It is the basis on which modern deeds have been formed. By the Statute of Uses, 27 Henry 8, c. 10, A takes nothing, but is a mere conduit pipe to pass an estate to B, who gets the fee. By this Act all feoffments required a valuable consideration (which implies a use), or to be made not only unto, but unto and to the use of, the grantee. The statute enacts that where one is seised to the use, trust, or confidence of another, he who has the use, trust, or confidence shall have the legal estate.

Q. How far is it correct to say that a man cannot legally convey to himself?

A. At Common Law a man could not occupy the position of grantor and grantee, and thus two conveyances were needed—(1) a conveyance to a third person, and (2) a conveyance from such third person to the original grantor, or to him and another. But under the Statute of Uses one conveyance only is needed, as the interposition of a grantee to uses enables the grantor to settle his own fee simple on himself for life or in tail, or to convey it to himself and another. And now, since 1881, freehold land can be conveyed by a

man to himself jointly with another without the interposition of a grantee to uses. (44 & 45 Vict., c. 41, sec. 50.)

Q. Explain the different effects of executing a contract for sale in the case of real estate and personal chattels respectively.

A. As regards real estate the legal ownership remains in the vendor until a proper deed of conveyance is executed; and although *in equity* the land belong to the purchaser and the purchase-money to the vendor, *at law* each party merely acquires the right to sue the other for damages on breach of the contract. But as regards personal chattels, the legal ownership is transferred from the vendor to the purchaser without the necessity of anything further, provided the contract contains the legal requisites for a sale.

Q. State the different modes of alienation of personal chattels.

A. (1) By a mere gift accompanied by delivery; (2) by deed; (3) by sale; and (4) by will.

Q. What are the usual covenants in purchase deeds and mortgage deeds of freeholds, copyholds, and leaseholds respectively? Is there any difference between such covenants in purchase deeds and those in mortgage deeds?

A. In a purchase deed of freeholds, the usual covenants are that the vendor has good right to convey, for quiet enjoyment, free from incumbrances, and for further assurance; in a mortgage of freeholds are inserted the same covenants, with another for payment of the mortgage money. In a deed of covenant to surrender copyholds on a sale, the usual covenants are by the vendor to surrender to the use of the purchaser, for good right to surrender, for quiet enjoyment, free from incumbrances, and for further assurance; in a similar deed on a mortgage, the usual covenants are to surrender to the use of the mortgagee conditionally, and the same four other covenants as on a sale, and a covenant to repay the mortgage money. In a purchase deed of leaseholds, the usual covenants are (1) by the vendor, that the

lease is valid, and the rent and covenants have been paid and performed up to date, for good right to assign, for quiet enjoyment during the term, free from incumbrances, and for further assurance; and (2) by the purchaser, to pay rent and perform covenants during the term and to indemnify the vendor therefrom. In a mortgage deed of leaseholds by underlease, the usual covenants are by the mortgagor for right to demise, quiet enjoyment after default, free from incumbrances, for further assurance, to insure against fire, and to pay the rent and perform the covenants in the original lease and indemnify the mortgagee therefrom; if the mortgage is by deed of assignment then the covenants are the same, except that the first covenant is for right to assign. The practical difference between covenants for title in a purchase deed and a mortgage deed is that in the latter the mortgagor covenants absolutely against all the world, whilst in the former the vendor only covenants for himself and those claiming through him and those through whom he claims since the last conveyance for value, not being a marriage settlement. (See Prideaux, Vol. I.)

Q. Under section 7 of the Conveyancing Act, 1881, what covenants are implied by conveying "as beneficial owner," in a conveyance for valuable consideration of freeholds and leaseholds on a sale, and by way of mortgage, respectively; and what covenants are implied by conveying "as settlor" in a conveyance by way of settlement?

A. On a sale of freeholds, the same four qualified covenants for title stated in the preceding answer; and on a mortgage, the same four absolute covenants for title. On a sale of leaseholds, the same five qualified covenants for title by the vendor that are set out in the preceding answer; and on a mortgage, the same five absolute covenants, and one to pay rent and perform covenants and indemnify the mortgagee are implied. In the settlement, the only covenant implied, is one limited to the settlor and those claiming through him, for further assurance.

Q. Sketch, in outline, a conveyance of freeholds on a sale by mortgagor and mortgagee.

A. Date; Parties—(1) mortgagee, (2) mortgagor as vendor, (3) purchaser; Recitals.—(1) of mortgage, (2) of agreement for sale, (3) of sum now due on mortgage, and (4) agreement to pay off mortgage out of purchase money; Testatum that in consideration of £ paid to mortgagee by direction of mortgagor (receipt acknowledged) and of the balance of purchase money paid to mortgagor (payment and receipt acknowledged) The mortgagee *as mortgagee by direction of the mortgagor as beneficial owner* conveys and the mortgagor *as beneficial owner* conveys to purchaser; Parcels; Habendum to purchaser in fee freed from said mortgage; Testimonium. Prideaux, Vol. 1.)

Q. Conveyance to the purchaser of freehold land contracted to be sold to him by a testator who died in 1883, *having by his will devised the land to his son John in fee, and appointed his wife his executrix; state who is entitled to the purchase-money, and who can convey the estate?*

A. The contract for sale operates as a conversion, and the wife, as executrix, is entitled to the purchase-money. If the contract were binding on, and enforceable by, both vendor and purchaser at the death, the vendor was a trustee, and the legal estate passed to the widow, as executrix, by sec. 30 of the Conveyancing Act, 1881, and she only can convey; but if the contract were not so binding on, and enforceable by, both parties, then either the widow, as executrix, can convey under sec. 4 of the Conveyancing Act, 1881, or the devisee can convey.

Q. A testator specifically bequeathed a leasehold house to A, and appointed B his executor. A has sold the house to C. Can the purchaser require B's consent to the sale?

A. The purchaser can insist on having the executor's assent shewn in some way, and the usual and best course is for the executor to join in the assignment. The reason is that the leasehold house is assets in the hands of the executor

for payment of debts, and may be disposed of by the executor for that purpose alone, notwithstanding the specific bequest.

Q. What is meant by a vendor's lien for unpaid purchase-money, and how can it be enforced? How is the actual receipt of the purchase-money usually acknowledged in a conveyance on sale?

A. The right of a vendor to have his unpaid purchase-money satisfied. As regards goods, this lien is a mere passive right to retain possession until the purchase-money is paid, and is lost by parting with the possession to the purchaser. As regards lands, the lien is an equitable right to have the unpaid purchase-money with interest at 4 per cent.; it commences only when the vendor parts with possession of the lands to the purchaser; and it may be enforced as a constructive trust by an action in the Chancery Division. Where the purchase deed was executed before 1882, both by a receipt in the body of the deed and a signed receipt indorsed on the back; but since 1881, a receipt in the body of the deed is sufficient. (44 & 45 Vict., c. 41, sec. 54.)

Q. (a) *What practical difference has been made by the Conveyancing Act, 1882, with respect to the execution of conveyances under powers of attorney?* (b) *A landowner, about to embark for India, pending negotiation for a loan on mortgage of his land, offers to execute a power of attorney enabling his brother to complete the transaction. Can the mortgagees be advised to advance their money, and accept a mortgage under a power of attorney in any and what form?*

A. (a) Formerly the purchaser had to be satisfied that the donor of the power was alive and had not revoked the power at the time the conveyance was executed by the attorney; but this is no longer the case if the power is created by instrument executed after 1882, and is expressed to be irrevocable for a fixed time not exceeding one year, or is expressed to be irrevocable and is given for value (secs. 8 & 9.), where the power is exercised in favour of a purchaser, [illegible], mortgagee, or other person taking or dealing with

property for valuable consideration (sec. 2). (*b*) Certainly, if the landowner, since 1881, gives his brother a voluntary power of attorney, expressed to be irrevocable for one year, and the transaction is completed within the year; or if he gives for value a power expressed to be irrevocable, no matter when the business is completed.

Q. What restrictions are placed on constructive notice by the Conveyancing Act, 1882, *sec.* 3.

A. In every purchase, lease, mortgage, or taking or dealing for valuable consideration, of or with real and personal property, debts, choses in action, and any right or interest in the nature of property, whether in possession or not—whenever the transaction takes place, unless it is before 1883, and litigation was pending on 1st January, 1883—the "purchaser" is not to be prejudicially affected by notice of any instrument or fact or thing, unless (1) it is within his own knowledge, or would have been if he had made such inquiries and inspections as he reasonably ought to have made, or (2) in the same transaction with respect to which the question of notice arises, it has come to the knowledge of his counsel, solicitor, or other agent, as such, or would have come to the knowledge of his solicitor or other agent, as such, if he had made such reasonable inquiries and inspections as he ought. But the "purchaser" is not relieved thereby from any covenant, condition, proviso, or restriction in any instrument under which his title is derived, mediately or immediately; and he is not to be affected by notice where he would not have been affected if the section had not been enacted.

Q. What is "goodwill"? On a sale of it, what covenant should the buyer require from the seller, and why?

A. Goodwill is the benefit arising from connection and reputation, or the probability of the old customers going to the new firm which has acquired the business. A covenant that the vendor will not set up business in the same line within so many miles of the old place of business, and that he shall in no way solicit the former customers to deal with

him. In the absence of this covenant there is nothing to prevent the vendor setting up business next door to his old place of business, and soliciting his old customers in any way he likes, the only restriction being that he must not hold himself out as the old firm. (Pearson v. Pearson, 54 L. J., Ch., 32.)

Q. What are choses in action; and what practical difference has been made in the mode of assignment of them by the Judicature Act?

A. A chose in action is a right to bring an action to recover some debt or other thing resting in action. Formerly it was not assignable at law, and the plan adopted was to give the assignee a power of attorney to use the assignor's name in suing. But now, under the Judicature Act, 1873, sec. 25 (6), a chose in action may be assigned absolutely by writing under the hand of the assignor, notice in writing being given to the holder of the chose, and the assignee can then sue in his own name.

Q. How is the legal title transferred in the following properties:—(a) £1,000 Consols; (b) £1,000 railway stock; (c) copyright in a book, (d) letters patent?

A. (*a*) By signature of the books at the Bank of England as prescribed by statute, either in person, or by an attorney appointed by writing under hand and seal, attested by two credible witnesses. (*b*) By deed registered at the office of the company. (*c*) By entry in the register at Stationers' Hall of the fact of the assignment and the name and address of the assignee, in the form prescribed by the Copyright Act, 1842, without stamp or deed; or by other writing. (*d*) By deed registered at the Patent Office.

Q. State briefly the principal rules regulating the transfer and mortgage of British ships.

A. The transfer is by bill of sale under the Merchant Shipping Act, 1854, attested by one witness, accompanied by a declaration that the transferee is entitled to own a British ship, and registered at the port of registry. A mortgage is made

in the same way; the mortgagee does not thereby become the owner, except so far as may be necessary to enforce his security; the mortgagee has a power to sell and to give receipts; the mortgage is not affected by bankruptcy of the mortgagor; it ranks as from registration; and is discharged by the mortgage deed with a receipt endorsed being produced to the registrar, who then enters up satisfaction of it in the registry.

Q. A testator bequeathed a leasehold house to A, and appointed B his executor. A has agreed to sell the house to C, and B has agreed to sell it to D. Which contract can be enforced, and what compensation, if any, can the disappointed purchaser obtain?

A. The fact of B having contracted to sell the house shows he had not assented to the legacy; A's title is, therefore, incomplete, and without that assent his contract to sell to C is valueless. As the house vests in the executor with all the other personalty for payment of debts, B's contract is a valid one, and D can enforce specific performance and have it enforced against him. If, however, the executor had assented to the legacy, then A would have had an absolute title, and his contract would have prevailed. The only remedy of the disappointed purchaser is by an action for damages, and the return of his deposit (if any).

Q. A testator devised real estate to the use of trustees and their heirs during the life of his sister A, in trust for her sole and separate use, with remainder to the use of her husband B for his life, remainder to the use of the right heirs of A. Can A and B and the trustees sell the property?

A. A takes an equitable life estate for her separate use, B has a legal life estate in remainder, and the heir of A (who can only be ascertained at A's death) takes a legal fee simple in remainder. The life estate to A being equitable, and the limitation to A's heirs being legal, the rule in Shelley's case does not here apply. A can sell and convey the fee simple as tenant for life under the Settled Land Act, 1882, and the

trusts of the settlement will attach to the purchase-money which will be considered as real estate in the hands of the trustees.

Q. Freehold land was devised to A for life, remainder to his son B in tail, remainder to the right heirs of A. A has died intestate, leaving B his heir. C has bought the land from B. How should he take the conveyance, and to whose acts should the covenants for title extend?

A. B possesses an estate tail in possession with a fee simple in remainder by descent, there being no merger of an estate tail. B must execute and enrol a disentailing deed, and then convey the absolute fee simple so acquired by ordinary deed of grant; or, as B has all the powers of a tenant for life under the Settled Land Act, 1882, he may sell and convey the fee simple under that Act, and then the trusts of the settlement will attach to the purchase money. In the former case, B will covenant for the acts of himself, of those claiming under him, and of those through whom he claims since the last conveyance for value, not being a marriage settlement; in the latter case as the tenant for life is a trustee as regards the exercise of his powers under the Settled Land Act, he will only covenant for his own acts.

Q. What are the essential attributes of mortis causâ *donations?*

A. The donation must be made under the impression of impending death, to take effect if the donor does not recover from his present sickness, and does not revoke the gift before his death; must be of personal property, evidenced by delivery of the thing given, or the means of obtaining possession of it, or the title to it, to the donee, or some one for him, by the donor, or some one for him, in his presence and by his direction. It is liable to the donor's debts, to probate duty, and to legacy duty. It may be of a bond, of bills or notes, or cheques payable to the order of the donor, though not indorsed; of a policy of life assurance, etc.; but not of the donor's own cheque unless cashed in his lifetime.

Q. What is necessary to enable the assignee of a policy of life assurance to sue on the policy in his own name?

A. The assignment must be duly stamped, and the assignee must have given notice to the assurance company of the assignment. (30 & 31 Vict., c. 144; 51 & 52 Vict., c. 8, sec. 19.)

Q. How far is a voluntary settlement of (a) *real estates,* (b) *chattels real,* (c) *pure personalty, void or voidable as against a subsequent purchaser for value?*

A. *(a)* Under 27 Eliz., c. 4, the settlement would be void against the subsequent purchaser, even though he has notice of it, except in the one case of a charity, when, if he has notice, but not unless, he takes subject to it. *(b)* With regard to these, recent decisions show that, when there is any rent, or there are any onerous covenants in the lease, the person taking—by reason of the liability he incurs for the same—cannot be considered a volunteer, and that in such a case the settlement would be good against the subsequent purchaser. (Price v. Jenkins, 4 Ch. Div., 483; *Ex parte* Hillman, 10 Ch. Div., 622.) (c) The settlement of the pure personalty would be good, as the 27 Eliz., c. 4, does not apply to pure personalty.

Q. Under what circumstances can a voluntary settlement be set aside by (a) *the creditor,* (b) *the trustee in bankruptcy of the settlor?*

A. (*a*) Under 13 Eliz., c. 5, where it can be deemed a fraud upon the creditors. (*b*) Under the Bankruptcy Act, 1883, if the settlor becomes bankrupt within two years; or if he becomes bankrupt after two, but within ten, years after the settlement, unless it can be proved that he was solvent at the time of making the settlement, without the aid of the settled property, and that the settlor's interest in the property passed to the trustees on execution of the settlement.

Q. A, a married man, executed a settlement, by which he conveyed real estate, and assigned personal property, consist-

ing of railway and other shares, to trustees, upon trust for himself for life, then for his wife for life, then for their children equally. He afterwards sold for value, and by deed purported to convey and assign all the property comprised in the settlement to B, who had notice of the settlement. Who is entitled to the property, and why?

A. As regards the personalty, the settlement prevails over the sale, and consequently the purchaser can only take the vendor's life interest. But as regards the realty, the settlement is voluntary (unless in pursuance of an antenuptial agreement), and under 27 Eliz., c. 4, which applies only to lands, tenements and hereditaments, the purchaser is entitled to a conveyance which will override the settlement.

Q. Under a grant to A B, and under a devise to A B, what estate in each case would A B take under the present law?

A. Under the grant A B will take a life estate in the property granted. Under the devise A B now takes a fee simple or other the testator's whole interest, unless a contrary intention is expressed (1 Vict., c. 26, sec. 28); before this statute, A B would have taken a life estate only, unless words had been used showing that the testator intended to give a larger estate.

Q. Under a limitation in a deed to A B and his heirs male; and under a devise to A B and his heirs male; what estate does A B take in each case, and why?

A. Under the deed, although the grantor clearly intended to give A B an estate in tail male, yet as he failed to make use of the essential technical words "heirs male of his body," or "in fee tail" the word male is rejected as repugnant, and A B takes a fee simple. Under the will, A B takes an estate in tail male, because the cardinal rule for construction of wills is that the testator's intention must be observed.

Q. State the law relating to the ownership of title-deeds where the lands are the subject of settlements and other conveyances.

A. The title deeds of land so far partake of the nature of

realty that they pass with the land itself on its devolution. The owner of the legal estate is the person entitled to them, and this rule is equally applicable to real and to personal estate. If, therefore, the legal interest in the settled lands is vested in trustees in trust to pay the rents and profits to a tenant for life, and after his death in trust for other persons, the trustees are, as a general rule, entitled to the custody of the title deeds (Garner v. Hannyngton, 22 Beav., 630); the *cestui que trust* has a right to inspect and take copies at any time. But if the tenant for life has both the legal and equitable estates, he is entitled to the custody, unless he has been guilty of misconduct endangering the safety of the deeds, or unless there is a suit pending as to the property, and it is more convenient for the purposes of the suit that they should be in Court. The trustee of a bare legal estate will be compelled to deliver the deeds to his *cestui que trust*. (2 Prideaux, 14th edition, 200.) A purchaser is ordinarily entitled to such title deeds as his vendor possesses, unless they relate also to property retained by the vendor; on a sale in lots, the purchaser of the largest lot is entitled to deeds relating to all. A first mortgagee, legal or equitable, is entitled to the deeds. A lessee is entitled to possession of his lease.

10.—Wills.

Q. Give a short account of the measures by which the right of testamentary alienation of real estate has been secured.

A. The feudal system did not permit real estate to be disposed of by will. When uses were introduced, a conveyance was made to the uses to be declared by a will, and a devise then made of the use, which a Court of Equity enforced. 27 Henry 8, c. 10, by turning the use into the legal estate, for a time put an end to devises. By 32 Henry 8, c. 1, a will might be made (valid even in a court of law) of two-thirds of land in chivalry tenure and all lands in socage tenure. 12 Charles 2, c. 24, turned the first-named tenure

into socage tenure. The Statute of Frauds prescribed attestation. The Wills' Act, 1 Vict., c. 26, governs all wills made since 1837.

Q. How must a will be executed and attested? What would be the result if (1) *an executor or* (2) *a legatee under the will were one of three attesting witnesses?*

A. It must be signed at the foot or end thereof by the testator or some one for him, in his presence and by his direction; the signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and the witnesses must attest and subscribe the will in the presence of the testator, but not necessarily in the presence of each other. (1 Vict., c. 26, sec. 9.) (1) The will and the appointment of the executor would both be valid (sec. 17). (2) The will would be good with the exception of the gift to the attesting legatee, which will fail, unless the legatee can satisfy the Probate Court he did not sign as a witness (*Re* Sharman, 1 P. & D., 661; *Re* Lanceley, *L. S. J.*, March, 1889.)

Q. What changes were made by the Wills Act of 1837 *with regard to the attestation of wills, the exercise of testamentary powers of appointment, and the property passing by a will?*

A. Formerly, wills of real estate had to be attested by three credible witnesses, and if a witness took a benefit under the will he was held to be incredible, and the will was void; now, attestation by two witnesses is sufficient, and if an attesting witness (or his husband or wife at the time of attesting) receives a benefit under the will, the will is good with the exception of that benefit. Formerly, in exercising a power of appointment by will all the formalities as to execution and attestation prescribed by the instrument creating the power had to be strictly observed or the exercise was bad; but now, as regards execution and attestation, the power is deemed to be complied with, provided the will is executed like any other will under 1 Vict., c. 26. As regards the property, formerly a will, as regarded real estate, spoke from

its date, and only passed the specific property of which the testator was then possessed; but now, a will speaks from the testator's death, and passes all his property at the time of death, except (1) where a contrary intention appears, or (2) the will is made by a married woman during coverture under the Married Woman's Property Act, 1882, in which case it is specific and only passes property of which she actually becomes possessed during the coverture. (*In re* Price, Stafford v. Stafford, 28 Ch. D., 709; 54 L. J., Ch., 509.)

Q. State the several ways in which a will may be revoked, and how any obliteration, interlineation, or other alteration in a will after its execution must be made in order to be effectual.

A. A will is revoked (1.) By marriage (except a will made in exercise of a power of appointment when the property appointed, would not, in default of appointment, go to the heir, customary heir, or next-of-kin of the appointor.) (2.) By burning, tearing, or otherwise destroying it, with the intention of revoking it. (3.) By any writing executed as a will, and declaring an intention to revoke it. (4.) By a subsequent will or codicil, so far as inconsistent. No obliteration, interlineation, or other alteration in a will made after its execution is valid unless such alteration, &c., is executed as a will. (1 Vict., c. 26, secs. 18, 20.)

Q. Give an instance of a general, a specific, and a demonstrative legacy. And state out of what funds, or property, each kind of legacy is payable.

A. A general legacy is one to be satisfied out of the general personal estate, *e.g.*, a horse, £100, a suit of mourning. A specific legacy is a gift of an ear-marked part of testator's personalty, *e.g.*, my brown horse, my railway stock, the plate presented to me by X; and is lost if the testator is not possessed of the thing given at his death. A demonstrative legacy is a gift of a certain sum directed to be satisfied out of a particular fund, *e.g.*, £100 out of my consols; and if the fund is non-existent, or so far as it is insufficient, at testator's death, the legacy is treated as a general legacy.

Q. In what cases will a devise or bequest not lapse by reason of the death of the devisee or legatee in the testator's lifetime?

A. (1) Where it is a devise of an estate tail to any one, and the devisee leaves issue inheritable under the entail living at testator's death. (1 Vict., c. 26, sec. 32.) (2.) Where the devise or bequest is to a child or other issue of the testator, who leaves issue living at testator's death; in this case the devise or bequest takes effect as if the beneficiary had died immediately after the testator, so that if he has left a will the property goes under that will (1 Vict., c. 26, sec. 33), unless, indeed, the devisee's will leaves the property to the original testator. (*In re* Hensler, 19 Ch. D., 612.)

Q. Testator devises one freehold farm to each of his nephews, A, B, and C, in tail, and the residue of his real estates to the three nephews as tenants in common in fee. A died in testator's lifetime, leaving sons and daughters living at testator's death. To whom, and in what shares, do the farms and residuary real estate respectively pass at testator's death?

A. A's farm goes to his eldest son as tenant in tail by descent, because of 1 Vict., c. 26, sec. 32; B is tenant in tail of his farm by purchase; so is C. B and C take two undivided third parts of the residue as tenants in common in fee; but A's undivided third part lapses, he not being a child or other issue of the testator. And as A's third is part of the residue, there is an intestacy as to it, and it goes to the testator's heir-at-law.

Q. What change did the Wills Act make in the ordinary interpretation of the words "die without issue" when occurring in a will?

A. Prior to the Act, the words were construed to mean an indefinite failure of issue and so gave an estate tail; but since the Act, they mean a want or failure of issue at the death of the person on whose death without issue the property is to go over, unless a contrary intention appears in

the will by reason of such person having a prior estate tail, or of a preceding gift being, without implication by such words, a gift of an estate tail to such person or issue, or otherwise. (1 Vict., c. 26, sec. 29; see also Conveyancing Act, 1882, sec. 10, *ante* page 98.)

Q. Explain the difference between an executor and an administrator. Under what circumstances are the following forms of letters of administration respectively granted, viz., (a) *during minority*; (b) *during absence*; (c) *with a will annexed*; (d) *of unadministered goods*; *and* (e) *when, in the first two cases, does the administrator's office cease?*

A. An executor is the person named by the testator in his will to carry out his wishes; all the personalty vests in him immediately the testator dies; and he may do any acts of administration short of going into Court before he takes probate, which is a mere authentication of his title. But an administrator is an official appointed by the Court of Probate to wind up the deceased's affairs, where there is no executor, or the executor declines to act, or dies intestate without completely winding up the estate; he has no authority but the letters of administration, and cannot act without them. (*a*) Where a sole executor or the next of kin is a minor; (*b*) or is out of the kingdom at the death, or goes to reside abroad, after taking a grant, and remains there for a year; (*c*) where an executor dies before the testator, or renounces, or there is a will which does not appoint an executor; (*d*) where an executor dies intestate, or an administrator dies, without having fully administered the estate; (*e*) when the minor attains his majority and the absent one returns, respectively.

Q. If a creditor appoints his debtor his executor, what is the effect at law, and in equity, respectively?

A. At law this operated as an extinguishment of the debt, because the executor could not sue himself; but in equity the executor is bound to account for the debt to the testator's estate.

Q. (a) *A bequeathed his watch to X, and appointed Y his executor. At the death of A the watch was in the hands of a*

watchmaker, who wrongfully refused to deliver it up. Who is the proper person to take proceedings for its recovery, and why? (b) *A owed B* £500 *and C* £200. *The former debt was payable immediately, but the latter was payable three years hence. A by his will bequeathed* £300 *to B, and the same sum to C. Would either and which, of the debts be satisfied by the legacy left to the creditor?*

A. (*a*) The executor, for all the personalty vests in him the moment testator dies, and the legatee's title is incomplete until the executor has assented to the legacy. (*b*) The legacy to B will not satisfy his debt even *pro tanto*, but the legacy to C will satisfy his debt. The leaning of the Court is against satisfaction of debts by legacies; consequently there is only a satisfaction where the legacy is equal to or greater than the debt, and in all other respects equally beneficial, and the debt is owing when the will is made, and the will does not direct both debts and legacies to be paid.

Q. State briefly the duties of an executor with respect to the administration of the testator's estate.

A. He must bury the deceased in a manner suitable to his estate; make an inventory of the personal property; prove the will; collect and realise the personalty, bringing actions where necessary for that purpose; pay the debts in proper order; pay the legacies, pass the residuary account, and pay the duty; and pay the residue to the residuary legatee, or, if none, to the next-of-kin. If there are no next-of-kin, he is personally entitled to the residue, unless the will evinces a contrary intention.

Q. What acts of administration can an executor do before probate?

A. He may do all ordinary acts of administration short of going into Court—*e.g.*, make inventories, sell and assign personalty, collect debts, pay debts and legacies, commence an action; but if he has occasion to go into Court in the action, he must produce the probate, as that is his only evidence of his title to sue.

Q. Give some account of the law relating to the transmission of stock by will.

A. The Acts formerly dealing with this subject allowed stock to be bequeathed by will in writing attested by two credible witnesses; but the Court of Chancery virtually overruled this provision by holding that, being personal estate, liable for payment of debts, it must devolve upon the executor, even though specially bequeathed, and that the executor having it in his hands by virtue of his office was bound, after payment of debts, to dispose of it according to his testator's will, even though unattested. Now, all wills have to be attested by two witnesses under 1 Vict., c. 26. Stock may be transferred by executors, notwithstanding specific bequest thereof, but the probate of the will must be left at the bank for registration, and all the executors who have proved may be required by the bank to join in the transfer. (8 & 9 Vict., c. 97, sec. 1; 33 & 34 Vict., c. 71, secs. 17, 23.)

Q. In what cases can executors and testamentary trustees respectively sell or mortgage their testator's real estate for payment of his debts or legacies?

A. By 22 & 23 Vict., c. 35, secs. 14-17, if the testator has charged his real estate with payment of debts or legacies; then (1) if he has devised the same to trustees for his whole interest therein and has not made any express provision for raising such debts or legacies, the trustees may raise the same by sale or mortgage, notwithstanding the trusts actually declared; but (2) if testator has not devised his real estate to trustees for all his interest therein, the executors for the time being may so sell or mortgage. But the Act is not to extend to a devise to anyone in fee or in tail or for testator's entire interest, charged with debts or legacies; nor the power of such devisee to sell or mortgage.

Q. Is an executor bound to plead the Statute of Limitations to a demand for the payment of a debt which is statute-barred, or may he pay it if he thinks fit? If the estate is being adminis-

tered in the Chancery Division, is any and what other person competent to take the objection although the executor may not have insisted upon it?

A. An executor may pay a debt proved to be justly due from his testator, although barred by the Statute of Limitations; but not where it is barred by any other statute (*In re* Rownson, Field v. White, 29 Ch. D., 358). If the estate is being administered in the Chancery Division, the plaintiff, or any person interested in the fund, may plead the Statute of Limitations against a claim set up by a creditor, although the executor refuse to take advantage of such plea. (Shewen v. Vanderhorst, 1 Russ & M., 347; 2 Russ & M., 75; Williams on Executors, 1810, 1811.)

Q. An owner in fee of land died in February, 1879, *having devised the land to his son absolutely, and bequeathed his personal estate to his widow, whom he appointed executrix. Who can recover from the tenant the Lady-day rent, and who is entitled to it when recovered?*

A. The rent accrues due after the testator's death, viz., on 25th March; consequently under the Apportionment Act, 1870, the rent is only recoverable from the tenant by the son as devisee, who may distrain or sue; and the son is personally liable to the executrix in an action for the apportioned part p to the death of the testator.

Q. Testator appointed A and B his executors. In administering his estate it becomes necessary to (a) *sue a tenant of a freehold house for rent in arrear at testator's death*; (b) *sell and convey a leasehold house*; (c) *receive a debt due to testator*; (d) *assent to a legacy to A. State which of these acts can be done either by A or B solely, and which must be done by them jointly?*

A. Both A and B must join in the action; but as any one executor alone can perform all other ordinary acts of administration, either A or B solely, or the two jointly, can do any of the other acts specified.

Q. (a) *In the absence of any express direction upon the sub-*

ject, from what period, and at what rate, do legacies carry interest? (b) *If a legacy is left by a parent, or person in* loco parentis, *to an infant, from what period would the legatee be entitled to interest, and why?* (c) *If a legacy is given to an infant, or to a person beyond the seas, in what way can the executor obtain a proper discharge for it?*

A. (*a*) From a year after the death of the testator, at 4 per cent. (*b*) From the death of the testator, unless some other fund is given for maintenance, because the legacy is presumed to be given for maintenance. (*c*) By paying it into Court under the Legacy Duty Act. (36 Geo. 3, c. 52.)

Q. A testator bequeathed his residuary personal estate, as to one-third to A, B, and C in equal shares; as to another third to C, D, and E in equal shares; and as to the remaining third to E for life, and after his decease to his children equally. C died in the lifetime of the testator; and E had five children of whom three were born before and two after the death of the testator; but four of them died in E's lifetime, leaving only one surviving E. Among whom, and in what shares would the testator's residuary estate be divisible, and why?

A. A and B will take two-thirds of one-third of the whole residuary estate between them. D and E will take the same fraction of the estate between them. There will be an intestacy of C's share, as the gifts to A, B and C, and to C, D and E, are gifts to them as tenants in common; C's share will, therefore, pass to the next-of-kin of the testator. As regards the third held by E for life, the four shares of his deceased children will pass to their personal representatives, as all the children of E took vested interests at the time of their birth. (Viner v. Francis, Indermaur's Conveyancing and Equity Cases, 34.) The fifth child surviving will of course take his own share.

Q. A widower bequeathed his residuary personal estate equally amongst his six named children, of whom A and B subsequently died in his lifetime. A died a widower, and intestate, leaving two children, who survived testator. B died

a bachelor, and testate. To whom, and in what shares, does the residuary personal estate belong?

A. The residuary bequest creates a tenancy in common; the four surviving children, therefore, each take one-sixth of the residue; A's share does not lapse (1 Vict., c. 26, sec. 33), but passes to his two children in equal shares; but B's share does lapse, and is to be divided amongst the testator's next-of-kin at the time of his death—viz., into five parts, one going to each of the four surviving children, and the other fifth between the two children of A *per stirpes*.

Q. If freehold land be limited to John and his heirs by Mary his wife, what estate has he (a) *during her life,* (b) *after her death without issue; and what power of disposition has he over the land during each of those periods?*

A. If the limitations are by deed, John takes a fee simple estate in possession with absolute powers of disposition; the use of the words "heirs of the body" or "in fee tail" being necessary to create an estate tail. But if the limitation is by a will, then—as any words of procreation in a will are held to indicate an intention to create an estate tail in the absence of avowed intention to the contrary, and the cardinal maxim is that the intention of the testator shall be given effect to as nearly as may be—John takes an estate in special tail, which he can convert into a fee simple absolute at any time during the life of his wife Mary by disentailing deed under 3 & 4 William 4, c. 74, but if he omits to do this before Mary's death without issue, he becomes tenant in tail after possibility of issue extinct, when he cannot bar the entail, and generally has the powers of a tenant for life.

Q. A man having freeholds, copyholds, leaseholds, money in the funds, and other personal estate, wishes to leave charitable and other legacies, and to divide the residue of his property equally between his nephews and nieces living at his death, and the children of such of them as may then be dead leaving issue. Sketch in outline such a will as you recommend him to make.

A. I should recommend him to give the whole of his property to trustees, upon trust to sell and convert into money such part of it as was not money, and to pay the various legacies and distribute the residue equally as mentioned. Having in view the provisions of the Mortmain Act, 1888 (51 & 52 Vict., c. 42), the will should contain a direction to pay the charitable legacies out of such part of the whole estate as consists of pure personalty in priority to any other legacies of the same degree.

Q. A testator who died in 1835, *devised Blackacre to A and his heirs, and the residue of his real estate to B and his heirs. A died intestate in the testator's lifetime. At the testator's death Blackacre was claimed by B, by A's heir, and by the testator's heir. Who was entitled to it? Would it have been different if the will had been made in* 1840?

A. Where the testator died in 1835, his heir-at-law was entitled; because the devise to A lapsed, and a residuary devise did not then pass lapsed and void devises as it does now by 1 Vict., c. 26. But if the testator died in 1840, this being since 1 Vict., c. 26, under sec. 24 of that Act, the residuary devisee B would take; unless A were a child or other issue of testator and left issue living at testator's death, when A's heir would take by force of sec. 32 of the same Act.

Q. Land was limited to A for life, remainder to B for life, remainder to the right heirs of C. A died in 1870; *C died in* 1875, *leaving D his heir, and having by his will devised all his real estate to E; B died in* 1878, *and F was then the right heir of C. Who became entitled to the land at B's death?*

A. The limitation to the right heirs of C conferred a vested remainder in fee simple on D so soon as C died, and D could dispose of it. If D did not dispose of it, and died intestate, we should not look for D's heir, but the ancestor C's heir (3 & 4 Wm. 4, c. 106, sec. 4); therefore F ultimately became entitled at B's death.

Q. A testator gave all his property to trustees upon trust for his daughter, subject to a condition that she would forfeit it in case she married without their consent. This property consisted of real and personal estates, and money charged on land. The daughter married without the consent of the trustees. What was the effect of the marriage upon the property given by the will, and why?

A. As regards the real estate and the money charged on land, the daughter forfeits all her interest; but as regards the personal estate, the condition is regarded as merely *in terrorem* and void unless there is a gift over, and as there is here no gift over, the daughter does not lose the personal estate.

11.—Husband and Wife.—Settlements.

Q. Give an outline of a marriage settlement of real property.

A. Date; Parties—(1) intended husband, (2) intended wife, (3) trustees; Testatum; in consideration of intended marriage the settlor conveys the real property to the trustees in fee simple—To use of settlor and his heirs until marriage, and afterwards—To use that the intended wife shall, during the joint lives of herself and her husband, receive a yearly rent charge (payable half yearly, the first payment to be made six calendar months after the marriage) as pin money for her separate use without power to anticipate; and subject thereto—To use of husband for life *sans* waste; with remainder—To use that the wife surviving her husband shall receive a jointure rent charge for life, commencing from the death, and payable half-yearly; and subject thereto—To use of trustees for 1000 years to raise portions for younger children; and subject thereto—To use of first and other sons of the marriage in tail male in succession, according to seniority; with remainder—To use of the daughters as tenants in common in tail, with cross-remainders amongst them; with remainder—To use of settlor in fee simple. There should be clauses (1) fixing amount of portions and giving husband power of

appointment with a hotchpot clause; (2) declaring trusts of portion term; (3) advancement clause; (4) power for husband to jointure a future wife, and charge portions for children of future marriage; (5) trustees to be such for Settled Land Act and Conveyancing Act; (6) power for husband (and after his death for trustees) to mortgage for improvements; (7) husband to be the person to appoint new trustees; (8) any special clauses desired; (9) settlement to be void unless marriage takes place within 12 months. (Prideaux, Vol. II.)

Q. Sketch in outline a marriage settlement of £5,000 consols belonging to the wife, upon usual trusts, omitting all clauses and powers sufficiently provided for by statute.

A. Date; Parties—(1) intended husband, (2) intended wife, (3) trustees; Recitals—(1) of intended marriage, (2) of agreement for settlement, (3) of transfer of consols to trustees; Testatum—Declaration that trustees should hold consols *(a)* until marriage, in trust for wife, and *(b)* after marriage, upon the following trusts, *i.e.*, (1) Trusts to retain, or sell and invest, with power to vary investments; (2) Trust to pay income to wife for life, for her separate use without power of anticipation, with remainder to husband for life; (3) Trust in remainder as to *corpus* and income for children as husband and wife, or survivor, appoint, and, in default of appointment, equally—sons at 21, and daughters at 21 or marriage, with a hotchpot clause; (4) Trusts (on default of issue) for wife surviving coverture absolutely, but otherwise as wife by will appoints, and in default of appointment to her next-of-kin under the statutes excluding husband. Then come—Agreement to settle future acquired property on like trusts, if so intended; Investment Clause; Power to appoint new trustees conferred by Conveyancing Act, 1881, to be vested in husband and wife and survivor; Solicitor trustee to charge costs; Settlement to be void unless marriage within 12 months; Testimonium (Prideaux, Vol. II.) If the settlement were of the husband's property, he would have the first life interest, and the trust (4) on default of issue would simply be for him absolutely.

Q. What is the object of adding a hotchpot clause to powers of appointment among children? Show how such a clause may operate favourably towards the representatives of a child dying before appointment.

A. To prevent a child to whom an appointment has been made taking any share in the unappointed funds without bringing the appointed share into account. Under such a clause, the representative of such child will share the unappointed fund with the children to whom no appointments have been made; whereas, in the absence of the clause, the children to whom appointments have been made will also be entitled to share in the unappointed funds.

Q. How can copyholds, leaseholds, and personal chattels be settled to accompany freeholds in strict settlement?

A. Copyholds should be surrendered to the use of trustees as joint tenants of a customary estate in fee simple upon trusts, and leaseholds and personal chattels should be assigned to the trustees absolutely to be held upon trusts and subject to powers and provisions—corresponding as nearly as law and circumstances permit with those relating to the freeholds. But as regards leaseholds and chattels, there must be a provision that they shall not vest absolutely in a tenant in tail by purchase unless he or she attains 21.

Q. Under a settlement, an estate was charged with £10,000 for younger children, and subject thereto was settled in the usual way upon the first and other sons of the marriage in tail male. The eldest child of the marriage was a daughter, but the first son pre-deceased his father, upon whose death the estate devolved upon the second-born son. Would he and the eldest daughter, or either and which of them, be entitled to participate in the division of the £10,000 among the younger children?

A. The eldest child being a daughter would be entitled to participate in the division of the £10,000, but not the second born son:—younger children, in fact, meaning those not taking the estate under the family settlement. (Prideaux, Vol. II.)

Q. (a) *Can an infant, and if so, at what age, make a valid and binding settlement on marriage, and if so, how?* (b) *A married man conveyed an estate to trustees upon trust for his wife and children, and afterwards agreed to sell the same estate for value to a purchaser with notice of the settlement. Can the purchaser insist upon having the estate, or is the settlement valid as against him?* (c) *A, upon his marriage, settled a part of his own property upon trust for himself until he should dispose of the same, or become bankrupt. He afterwards became bankrupt. Would such a settlement be binding upon his trustee in bankruptcy?*

A. (*a*) An infant not under 20, if a male, or 17, if a female, can make a binding settlement on his or her marriage, with the sanction of the Court of Chancery under 18 & 19 Vict., c. 43. (*b*) If the settlement is really a voluntary one, the settlement will be void as against the purchaser, even although, at the time he purchased, he had notice of it, under the provisions of the 27 Elizabeth, c. 4. (*c*) No; such a settlement will not be binding on the trustee. If, however, A acquired any property with his wife on the marriage, the settlement will be considered to be made with her property, and be valid up to the value of the property so received. (Prideaux, Vol. II.)

Q. Note the effect of marriage upon the wife's freeholds, leaseholds, choses in action, and choses in possession respectively.

A. *By the common law*—the husband became entitled to receive the rents and profits of the freeholds during the coverture, and, if he survived her, might have an estate by curtesy for his own life; he could deal with the leaseholds in any way except dispose of them by will, and, so far as he did not dispose of them *inter vivos*, they passed to the survivor; the choses in possession vested absolutely in him; and the choses in action vested absolutely in him, provided he reduced them into possession during the coverture, otherwise they passed to the survivor, but, if he survived, he took

as administrator. *Equity* permitted property to be given to the separate use of a woman, in which event the husband could only take (1) what the wife chose to give him, and (2) curtesy out of undisposed of freeholds of inheritance, and (3) undisposed of chattels real as her administrator; it also permitted the restraint on anticipation, which prevented her giving him anything beyond the income as it fell due; it also gave the wife her equity (or right) to a settlement out of her chose in action, which the husband could only reduce into possession by the aid of a court of equity; and it set aside a secret conveyance or settlement by a woman pending her marriage as a fraud on marital rights, except in a few rare instances. *The Legislature*, by 33 & 34 Vict., c. 93, enacted that (1) the wages, earnings, and savings of every married woman should be her separate property; and (2) that personalty acquired as next-of-kin, and money not exceeding £200 under a deed or will, and the rents and profits of freeholds and copyholds acquired by descent, should be separate property where the marriage was after the 9th August, 1870, and the property was acquired during coverture; and lastly, by 45 & 46 Vict., c. 75, it is enacted (1) that all real and personal property belonging to a woman married after 1882, or coming to her during the marriage, shall be her separate property; and (2) that where a woman was married before 1883, all property, "her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue" after 1882, shall be separate property. In construing the words in inverted commas, the Court of Appeal held, in Reid v. Reid, 31 Ch. D., 402, 55 L. J., Ch., 294, that where a reversionary interest was acquired before 1883 by a married woman, but it fell into possession after 1882, the Act does not make this separate property, as there can only be one accrual of title.

Q. How far is the concurrence of the wife necessary (1) *in conveyance by her husband of his freeholds, copyholds, and*

Q. (a) *Can an infant, and if so, at what age, make a valid and binding settlement on marriage, and if so, how?* (b) *A married man conveyed an estate to trustees upon trust for his wife and children, and afterwards agreed to sell the same estate for value to a purchaser with notice of the settlement. Can the purchaser insist upon having the estate, or is the settlement valid as against him?* (c) *A, upon his marriage, settled a part of his own property upon trust for himself until he should dispose of the same, or become bankrupt. He afterwards became bankrupt. Would such a settlement be binding upon his trustee in bankruptcy?*

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Q. Note the effect of marriage upon the wife's freeholds, leaseholds, choses in action, and choses in possession respectively.

A. *By the common law*—the husband became entitled to receive the rents and profits of the freeholds during the coverture, and, if he survived her, might have an estate by curtesy for his own life; he could deal with the leaseholds in any way except dispose of them by will, and, so far as he did not dispose of them *inter vivos*, they passed to the survivor; the choses in possession vested absolutely in him; and the choses in action vested absolutely in him, provided he reduced them into possession during the coverture, otherwise they passed to the survivor, but, if he survived, he took

as administrator. *Equity* permitted property to be given to the separate use of a woman, in which event the husband could only take (1) what the wife chose to give him, and (2) curtesy out of undisposed of freeholds of inheritance, and (3) undisposed of chattels real as her administrator; it also permitted the restraint on anticipation, which prevented her giving him anything beyond the income as it fell due; it also gave the wife her equity (or right) to a settlement out of her chose in action, which the husband could only reduce into possession by the aid of a court of equity; and it set aside a secret conveyance or settlement by a woman pending her marriage as a fraud on marital rights, except in a few rare instances. *The Legislature*, by 33 & 34 Vict., c. 93, enacted that (1) the wages, earnings, and savings of every married woman should be her separate property; and (2) that personalty acquired as next-of-kin, and money not exceeding £200 under a deed or will, and the rents and profits of freeholds and copyholds acquired by descent, should be separate property where the marriage was after the 9th August, 1870, and the property was acquired during coverture; and lastly, by 45 & 46 Vict., c. 75, it is enacted (1) that all real and personal property belonging to a woman married after 1882, or coming to her during the marriage, shall be her separate property; and (2) that where a woman was married before 1883, all property, "her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue" after 1882, shall be separate property. In construing the words in inverted commas, the Court of Appeal held, in Reid v. Reid, 31 Ch. D., 402, 55 L. J., Ch., 294, that where a reversionary interest was acquired before 1883 by a married woman, but it fell into possession after 1882, the Act does not make this separate property, as there can only be one accrual of title.

Q. How far is the concurrence of the wife necessary (1) *in conveyance by her husband of his freeholds, copyholds, and*

leaseholds respectively; and (2) *in conveyance by him of her own freeholds, copyholds, and leaseholds?*

A. (1) It is not necessary at all, as under 3 & 4 Wm. 4, c. 105, alienation by the husband bars dower (where the marriage is after that Act) out of estates of inheritance, and, as to leaseholds, it never was necessary. (2) By Common Law, as regards her freeholds and copyholds, she must concur by deed acknowledged, as otherwise the husband could only pass his right to the profits during the coverture and his curtesy estate (if any); but as regards her leaseholds it was not necessary. If the marriage took place before 1883, but she became entitled to any of the properties for the first time after 1882, *or* if the marriage was after 1882, then in any event she alone can dispose of the property.

Q. A husband has contracted to sell his wife's reversionary leaseholds. Is her concurrence in the conveyance necessary, and, if so, must she acknowledge the deed?

A. Unless the leaseholds are separate use property, the husband has the same rights in his wife's reversionary leaseholds as he has in her leaseholds in possession, and can dispose of them by act *inter vivos* without her concurrence (Donne v. Hart, 2 R. & M., 360), unless the interest is of such a nature that it cannot possibly vest in the wife during coverture. (Duberley v. Day, 16 Beav., 33; Prideaux Vol I.) If it is separate use property, then his contract to sell is valueless, as she only can dispose of it.

Q. A husband and wife, married in 1868, *propose to borrow money on the security of the wife's reversionary one-third share expectant on her mother's death, and not settled to her separate use, in the residuary estates bequeathed by the wills of her grandfather who died in* 1855, *and of her father who died in* 1875. *The estates consist of consols and railway stocks. What sort of security can they give, and what precautions should the lender take?*

A. As the wife's title accrued in 1855 and 1875 respectively, the property is not made separate use property by

statute. (Reid v. Reid, *ante* page 133.) As regards the one-third share under the 1855 death, that is a reversionary interest in personalty acquired before 1858 and consequently Malins' Act (20 & 21 Vict., c. 57) gives no power of disposal. The wife's power of disposition is therefore in abeyance during the coverture, and the mortgage executed by both will merely pass the interest which the husband has, *i.e.*, his expectant right to the fund if it falls into possession during his life, subject to the wife's equity to a settlement, and also subject to be lost by both the tenant for life and the wife surviving, the husband (Purdew v. Jackson, 1 Russ. 1.) But as to the share under the 1875 death, the husband and wife are empowered by Malins' Act to dispose of it by deed acknowledged. The lender should take an assignment by way of mortgage of both interests; enquire of the trustees in both cases if they have notice of any other charges; and give notice to them of the assignment as soon as made.

Q. What alteration has been made by the Conveyancing Act, 1881, *with respect to conveyance by a husband to his wife, and by a wife to her husband?*

A. By section 50, either may, after 1881, convey to the other freehold land, or a thing in action, by the like means, by which either might convey it to a stranger. Prior to 1882, this would only have been done by conveying to a third person to the use of, or in trust for, the husband or wife.

Q. What power of testamentary disposition of real and personal property respectively had a married woman before 1st January, 1883, *and what additional power of testamentary disposition does she possess since that date?*

A. Before that date, a married woman could only make a will of real or personal estate settled to her separate use as of right, and a will of personalty, not being separate property, with her husband's consent, which might be revoked at any time before probate; but since that date, she has also the added powers (1) if married before 1883, of making a will

of all property coming to her during the coverture after 1882, and (2) if married after 1882, of willing all her property at the date of, and also acquired during the coverture. (*In re* Price, Stafford v. Stafford, 28 Ch. D.; 709; 54 L. J., Ch., 509.)

Q. What is meant by the acknowledgment of a deed by a married woman? How far is acknowledgment necessary in the conveyance of freeholds by women who were married (a) *before, and* (b) *after* 1882?

A. The examination of the woman apart from her husband, before a judge of the Superior Courts or a County Court, or one commissioner appointed for the purpose under the Fines and Recoveries Act, as to her knowledge of the deed and to ascertain if she freely and voluntarily consents thereto. (3 & 4 Wm. 4, c. 74, sec. 80; 45 & 46 Vict., c. 39, sec. 7.) (*a*) It is always necessary, except where the property is settled to her separate use (and even then to pass the legal estate if that is vested in the husband), or acquired after 1882; (*b*) it is not necessary in any case, by reason of the provisions of the Married Women's Property Act, 1882.

Q. How far is a provision that a life interest given to any person under a settlement shall cease on bankruptcy or alienation valid?

A. Unless there is a gift over, it is simply void. But assuming there is a gift over, then (1) if the property settled comes from the life tenant, the gift over is good against his alienees, but void against the trustee under his bankruptcy; but (2) as regards property coming from any other person (*e.g.*, where such an interest is given to the husband in a settlement of the intended wife's fortune) the provision is altogether good; and (3) if a husband has received part of his wife's fortune on the marriage, and settled his own property with such a life interest for himself, the provision is good to the extent of the wife's fortune which he so received. (Prideaux (Dissertation on Settlements), Vol. II.)

Q. What are the requisites and incidents of dower, freebench and curtesy?

A. The requisites of dower as now existing, under the 3 & 4 Wm. 4, c. 105, are (1) marriage, (2) death of the husband, leaving some estate of inheritance (either legal or equitable) not disposed of by him, and without his having barred the dower, which he may do by a simple declaration in any deed or his will. The requisites to freebench are (1) a custom in the particular manor allowing it, (2) death of the husband leaving some estate undisposed of by him out of which, according to the custom, she may claim it. It may be noticed that 3 & 4 Wm. 4, c. 105, does not apply to freebench. The requisites of curtesy are (1) marriage, (2) seisin, (3) issue born alive capable of inheriting, and (4) death of the wife. The incidents of all the foregoing may be stated to be the right of holding the property in question for life; with certain powers of leasing conferred by 40 & 41 Vict., c. 18; and as regards curtesy only, all the powers of a tenant for life under the Settled Land Act, 1882.

Q. Describe the nature and incidents of a tenancy by the curtesy.

A. It is a life estate which the husband takes in all his wife's lands of inheritance in possession, of which she was the legal or equitable owner in severalty or in common, provided (1) he survives her, (2) there was a legal marriage subsisting at her death, and (3) issue born alive capable of inheriting. It attaches to separate use property, unless the wife has disposed of it by deed or will. As to gavelkind lands, it is independent of the birth of issue, but only extends to a moiety, and ceases on re-marriage. A tenant by curtesy (but not a tenant in dower) has all the powers of a tenant for life under the Settled Land Act, 1882.

Q. In what cases is a wife now dowable, and how can her right to dower be defeated by her husband?

A. She is now dowable only out of estates of inheritance (legal or equitable) of which her husband dies possessed, and

which he has not disposed of by his will. The husband can defeat her right to dower by ordinary declaration for that purpose made by him, by any deed, or by his will; the wife's dower is also subject to the debts of the husband charged on the land. (3 & 4 Wm. 4, c. 105.)

Q. By what methods can dower be barred? State the rule as to legacies in satisfaction of dower.

A. If the parties were married since 1st January, 1834, the dower may be barred by a simple declaration under 3 & 4 Wm. 4, c. 105. If prior to that date it can be barred by legal jointure, a fine, or uses to bar dower. The point as to a legacy in satisfaction of dower would of course only apply to the case of persons married on or before 1st January, 1834. Where the will contains provisions inconsistent with the assertion of her right to dower, the legacy will satisfy it in the sense that she will be put to her election and not allowed to claim the dower and the legacy.

Q. What was the modern form of a limitation to uses to bar dower, and in what does its efficacy exist?

A. A general power of appointment by deed was first given to the purchaser, by which he could dispose of the lands for any estate at any time during his life; in default of, and until appointment, the lands were given to the purchaser for life; and on determination of that estate, by any means, in the purchaser's life, a vested remainder was given to a trustee and his heirs during the purchaser's natural life in trust for him; with an ultimate remainder to the purchaser, his heirs and assigns. The efficacy was that it prevented dower attaching, for during the life of the purchaser he had no estate of inheritance in possession.

Q. What are a wife's pin-money, jointure, and paraphernalia; and what arrears of pin-money are recoverable by her and her legal personal representative respectively?

A. Pin-money is a yearly allowance secured to the wife by ante-nuptial settlement for dress and personal expenses suitable to the position of the husband. The wife can

recover one year's arrears, unless the husband has paid all her personal expenses, in which case she can recover nothing; unless she has complained and been assured by her husband that she will have it ultimately, in which case she can recover all the arrears. The wife's representatives cannot (from the very nature of the property) recover any arrears. Legal jointure is a competent livelihood of freehold for the life of the wife at least, to take effect presently in possession or profit after the death of the husband; it was an effectual bar of dower; it had to be made to the wife directly and not to any one in trust for her, and in lieu of her whole dower, and before marriage. Equitable jointure is a provision out of freeholds lacking any of the above-mentioned particulars, or a provision out of personalty; and only put the wife to her election between it and her dower. Paraphernalia comprise the wife's wearing apparel and ornaments and gifts of jewels, &c., from her husband, to which she is entitled, beyond her dower, provided the husband predeceases her without having disposed of them in his life. They are liable to the husband's debts, and must carefully be distinguished from separate estate.

Q. What is the effect of the Married Women's Property Act, 1882, *with respect to grants of probate and administration of personal estate?*

A. It enables probate or administration to be granted to a married woman without the assent of her husband; if so granted, it enables her to deal with the property without his concurrence; it makes her separate estate liable for any devastavit; and it releases the husband from all liability unless he has acted or intermeddled in the administration. (See section 24.)

12.—Incorporeal Hereditaments.

Q. Enumerate and classify the principal kinds of incorporeal hereditaments.

A. According to Blackstone, incorporeal hereditaments are chiefly of 10 sorts. 1. Advowsons. 2. Tithes. 3. Commons. 4. Ways. 5. Offices. 6. Dignities. 7. Franchises. 8. Corrodies or pensions. 9. Annuities. 10. Rents. They have been classified as 1. Appendant. 2. Appurtenant. 3. In gross.

Q. Define common appendant, and show in what respects this right has been especially favoured by the law.

A. The Common Law right of every free tenant of *arable* land to depasture on the lords' wastes all cattle needed for tillage and manurance of the lands. The Common Law favoured it by holding that it was implied in a grant of arable land as of necessity; and that it is not necessary to prescribe for it, as it arises by operation of law and in favour of tillage; and that it is apportionable, and is not lost by afterwards converting the arable land into pasture or building on it.

Q. Mention the characteristics of commons, (a) *appendant;* (b) *appurtenant;* (c) *in gross.*

A. Common appendant arose from necessity, and was the Common Law right of every free tenant of *arable* land to depasture on the lord's wastes all cattle needed for tillage and manurance of the land (*i.e.*, horses, cattle, and sheep, which are thence called commonable beasts); the number of beasts put on was not to exceed as many as the common would feed during the winter; as it is of common right, it need not be prescribed for, and on a sale of part of the lands in respect of which it arises, it can be apportioned; and it passes along with the lands in respect of which it arises. Common appurtenant is annexed to some corporeal hereditament, but is against common right because it depends on a special grant (either express or implied from long usage); it cannot be apportioned, and fails altogether when it cannot be exercised in its integrity; it may be created at the present day; and it also passes along with the property in respect of which it is claimed. Common in gross is the right of the owner to a *profit à prendre* out of the lands of another, arising by express

grant to the commoner, and not as appendant or appurtenant to any corporeal hereditament; it requires a deed for its transfer.

Q. Explain the rule that rent-charges and rights of common appurtenant should be regarded as being "against common right." What consequences have been deduced from the rule with respect to hereditaments of these kinds?

A. They are not of common right, for they do not arise by implication of law only as did common appendant, but by express grant, or (as to common appurtenant) by prescription or custom; and, unlike common appendant, they may be created at the present day. Common appendant was extinguished by purchase of all the lands over which the right existed; but rent-charges and commons appurtenant were regarded as entire and issuing out of every part of the land charged. Consequently, the purchase or release of any part of the lands subject to a rent-charge, or common appurtenant, destroyed the charge or common. By 17 & 18 Vict., c. 97, the rent-charge was made apportionable, and by 22 & 23 Vict., c. 35, the release of a portion of the lands from the rent-charge no longer destroys the whole rent-charge.

Q. (a) *What is common of pasture?* (b) *What are the two kinds of common of pasture usually met with?* (c) *When rights of common are appurtenant to land, will they pass by a conveyance of the land without mention of the appurtenances?*

A. *(a)* Common of pasture is the right of taking part of the produce of another man's land by the mouths of commonable beasts. *(b)* Common appendant and common appurtenant. *(c)* Yes. (Solme v. Bullock, 3 Lev., 165; Sacheverill v. Porter, Cro. Car., 482; see notes to Tyrringham's Case, Tudor's Conveyancing Cases.)

Q. What are the principal methods by which rights of common may be extinguished?

A. By express release; unity of seisin; or abandonment.

Q. What is an easement? State what is meant by an

affirmative easement, and what is meant by a negative easement. Give an instance of each.

A. An easement is a privilege without profit which the owner of one tenement, which is called the dominant tenement, has over another, which is called the servient tenement, to compel the owner thereof—(1) to permit to be done, or (2) to refrain from doing, something on the servient tenement for the advantage of the dominant tenement. The former is called an affirmative easement, and the second a negative easement. An instance of the former would be where the owner of Whiteacre has a right of way over Blackacre, he can compel the owner of Blackacre to permit him to go along the way. An instance of the second would be where the owner of Whiteacre has ancient lights in a house on his estate, he can restrain the owner of Blackacre from doing any act on Blackacre which will deprive him of his accustomed light and air.

Q. Explain prescription and custom; continuous and discontinuous easements.

A. Prescription, which is personal, is for the most part applied to persons being made in the name of a certain person and his ancestors, or of those whose estate he held, or in bodies politic or corporate and their predecessors; but a custom, which is local, is alleged in no person, but laid within some manor or other place. Continuous easements are those of which the enjoyment is, or may be, continual without the necessity of any actual interference by man, as a waterspout, or right to light and air, or drains; discontinuous easements are those the enjoyment of which can only be had by the interference of man, as rights of way or a right to draw water.

Q. Under what circumstances does there arise a way of necessity? How is it limited, and by whom is it to be selected, where more than one way is available?

A. A way of necessity arises either where a man grants a piece of land in the middle of his field, or where the grantor

conveys all the lands surrounding his field, and retains the field, provided in neither case an express right of way is granted or reserved. It is limited to such a right of way as will enable the owner of the close to enjoy it in the same condition as at the time of the grant, *e.g.*, if the close is arable or meadow, the owner may not put up houses and claim a right of way to them for his tenants. (Corporation of London v. Riggs, 13 Ch. Div., 798.) The grantee is restricted to such one way as will be convenient for the reasonable enjoyment of the premises; but, subject to this rule, the grantor is probably justified in assigning such a way as he can best spare. (Woolrych on Ways, 34.)

Q. Distinguish easements from those rights which, though similar to them in other respects, are not annexed to the ownership of land.

A. The distinction is that easements are rights of property enjoyed by a person *as accessory to his* ownership of land, and for its convenience over the land of another, by reason whereof the latter is bound to permit some definite use (not involving participation in the soil or its produce) of his land, or to refrain from some particular use of it; whilst an easement in gross is a right similar in extent but not annexed to the ownership of land, and exists because of a licence to do on another person's land that which, without such licence, would be a trespass, and is not alienable, and may be determined at any time by the withdrawal of the licence. (Edward's Compendium, 271, 272.)

Q. Define the easement of watercourse, and explain the various methods by which it may be acquired.

A. The right which a man has to the benefit of the flow of water in a defined channel. It may be acquired by express grant, or implied grant, or prescription under 2 & 3 Wm. 4, c. 71, or statute. (Sury v. Pigot, Indermaur's Conveyancing and Equity Cases, 11.)

Q. By what means may easements be extinguished?

A. They may be extinguished by express release, by the

authority of Act of Parliament, by unity of seisin, or by abandonment. As to abandonment, it is not necessary to show any definite period of non-user; it is not so much the duration of the cesser as the nature of the act done by the grantee of the easement, or of the adverse act acquiesced in by him, and the intention in him which either the one or the other indicates, which are material. As to extinguishment by unity of seisin, this will not occur where the easement is one of necessity, or is some right arising *ex jure naturæ*. (Sury v. Pigot, and Notes, Indermaur's Conveyancing and Equity Cases, 11.)

Q. What change was made by the Prescription Act in the law respecting rights to light and rights of way respectively?

A. Formerly a title by prescription could only be acquired by enjoyment time out of mind, *i.e.*, since the first day of the reign of Richard I.; then the judges established an artificial rule by which twenty years' adverse and uninterrupted enjoyment of an incorporeal hereditament, uncontradicted and unexplained, was cogent evidence from which the jury should be conclusively directed to presume a grant or other lawful origin of the possession. The Prescription Act, 2 & 3 Wm. 4, c. 71, enacted (*inter alia*) that rights to light are to be indefeasible after enjoyment without interruption for twenty years, unless enjoyed by consent in writing; and that rights of way and other easements (except light) are not to be defeated, after twenty years of such enjoyment, by merely showing the precise time when they began to be enjoyed, and after forty years of such enjoyment are to be indefeasible; and as to rights of common and other *profits à prendre* (except tithes, rent, and services) fixed the periods of thirty and sixty years. The time must be reckoned back from the date of action brought; and interruption must be acquiesced in for a year after notice, or it is of no avail.

Q. What interest has the owner of an advowson in the parsonage house and glebe lands? If he sells the advowson during a vacancy of the living, what result ensues?

A. As patron, he enjoys the perpetual right of presentation to the benefice; but he has no property or interest as such in the parsonage house and glebe lands. The advowson passes with the exception of the right to present on that particular vacancy, which is considered too sacred a thing to be bought and sold, the sale of such a right being simony; the vendor accordingly presents whom he will, and, if he does not present within six months, the right lapses to the bishop, and in turn to the archbishop and, finally, the Crown.

Q. In what cases, and subject to what restrictions, can quit-rents and other perpetual charges be compulsorily redeemed?

A. Where there was, at the end of 1881, a quit-rent, chief rent, rent-charge, or other annual sum issuing out of land—*not* being tithe rent-charge, or a rent reserved on a sale or lease, or a rent payable under a building grant, or a payment which is not perpetual—any person interested in the land may, by signed writing, require the Land Commissioners to certify under seal the sum in consideration whereof the rent may be redeemed, and may then give one month's notice in writing to the person who is absolute owner of the rent, or can absolutely dispose thereof, or can give an absolute discharge for its capital value, and may then pay or tender the certified value to such person, and on proof thereof get a certificate from the Commissioners absolutely freeing the land. (Conveyancing Act, 1881, section 45.)

Q. State the meaning of the following terms:—Franchise, lay-impropriator.

A. A *franchise* is a royal privilege subsisting in the hands of a subject, *e.g.*, to have a market, forest, fishery. *Lay-impropriator* denotes the owner of an advowson who has obtained it because it was vested in Henry 8 by statute and was afterwards granted by the Crown to a layman as a lay interest. (Edward's Compendium, 258.)

Q. Explain the meaning of the term "free-fishery."

A. A *free-fishery* is the exclusive right of fishing in a

public river, and is a franchise granted by the Crown to, or vested by prescription in, a private person and his heirs; the owner has a qualified property in the fish before they are caught; grants of this description can no longer be made by the Crown, being prohibited by Magna Charta. (Stephen's Commentaries, 10th edition, 674-676.)

Q. Describe the legal nature and incidents of personal annuities.

A. A personal annuity is an incorporeal chattel and personal property; it consists of an annual payment not charged on real estate; it may be limited to the grantee, or to him and his heirs, or the heirs of his body; if given to the grantee and his heirs, it will descend to the heir on an intestacy, but will pass under a bequest of all the grantee's personalty; if given to the grantee and the heirs of his body, the grantee takes a fee-simple conditional on his having issue and not an estate tail, but on his death without having had issue the annuity ceases; if given to the grantee *for ever*, it will devolve on the grantee's legal personal representative and not on his heir.

13.—Copyholds.

Q. What was the origin of manors? Can they now be created? Mention the legal incidents of a manor.

A. They originated in the large tracts of land granted by the Conqueror to his followers; which, being much larger than the *tenant in capite* could make use of in person, were subinfeudated or granted out by him to be held of him under certain services. They must all have been created prior to the statute of Quia Emptores, 18 Edw. 1, c. 1, which put an end to subinfeudation. By the grant of "a manor" will pass the demesne lands, the freehold of lands held by copyhold or customary tenants, the pastures, wastes, commons, mines, minerals, quarries, woods, and the ground and soil thereof, fisheries, fealty, suit of court, rents, and generally

all the services, Courts Baron with the fines and perquisites annexed thereto, Courts Leet with the like fines and perquisites, franchises and advowsons appendant. (See also Conveyancing Act, 1881, section 6.)

Q. Explain the nature of the lord's right to a fine on the alienation of copyholds.

A. It is a right founded on the custom of manors. In some manors the fine was always fixed; in others it was anciently arbitrary. An arbitrary fine is limited now to two years improved value of the land after deducting quit rents.

Q. Describe the different kinds of fines payable by custom in respect of copyhold estates.

A. Fines have been classified as payable (1) on the death of the lord, (2) on change of the tenant, and (3) for licences to empower the tenant to alienate, to demise for more than one year, and the like. Admittance-fines are either certain or arbitrary, but the arbitrary fine must be reasonable and must not exceed two years' clear intrinsic value (except in the case of joint tenants and of remainder-men for lives) where the copyholder has a right to demand admission. (Elton on Copyholds, 128.)

Q. What difference is there between copyholds and customary freeholds? To whom, in each case, do the minerals belong, and what rights has the owner of getting them?

A. The former are always expressed to be held "at the will of the lord," whilst the latter were never expressed to be so held. In both cases the freehold, and consequently the minerals, belong to the lord; but he may not enter on the surface of the lands to work them without the tenant's consent, although he may work them from a shaft sunk on adjoining land, taking care he does not injure the surface.

Q. How far can estates tail be created in copyhold, and how, when created, can they be barred? Explain the origin of the differences between freeholds and copyholds with regard to estates tail.

A. Only where there is a custom of the particular manor

allowing estates tail; if there is no such custom, a surrender of copyholds to A and the heirs of his body gives him an estate analogous to the fee simple conditional created by a like grant of freeholds prior to 13 Edw. 1, c. 1. Estates tail in copyholds are barred—(1) if legal, by surrender; (2) if equitable, by surrender or deed. The consent of the protector (if any) is necessary; and the transaction is enrolled, not in Chancery, but in the court rolls of the manor within six months (3 & 4 Wm. 4, c. 74). The distinction between copyholds and freeholds arises from the fact that the former are regulated by custom, which is their very life, and are not included in the statute *De Donis*, which relates only to freeholds.

Q. In what manner are copyholds conveyed? How is a mortgage of copyholds usually effected?

A. By surrender and admission, duly enrolled on the court rolls of the manor. They are mortgaged by conditional surrender. The mortgagee, to avoid payment of the fine, does not usually take admission unless he wishes to sell under his power of sale. When the mortgage is paid off, no re-surrender is necessary, unless the mortgagee has been admitted; but a memorandum signed by the mortgagee acknowledging satisfaction of the mortgage is entered on the court rolls, and this vacates the conditional surrender.

Q. How can copyhold property be enfranchised or converted into freehold?

A. (1) By voluntary conveyance of the freehold from the lord to the copyholder. (2) Under the provisions of the Copyhold Act, 1841, by agreement where the manor is settled or the present owner is under disability. (3) By agreement under the Settled Land Act, 1882, if the lord of the manor is a tenant for life under that Act. (4) Compulsorily, at the instance of either lord or tenant under the Copyhold Acts, 1852 to 1887, effected by the award of the Land Commissioners.

Q. What is the best mode of devising copyholds in trust for sale

A. They should not be actually devised to the trustees; but a simple direction should be given to the trustees to sell, by which means the necessity of the trustees' admittance will be avoided.

14.—Leaseholds, &c.

Q. Describe and distinguish the chief varieties of chattel interests in land.

A. They are those estates in land which are less than freehold, viz., (1) estates for years, (2) at will, and (3) at sufferance. The first is an estate for a fixed period of time having a certain ending; the second is an estate determinable at the will of either party; and the third is the estate held by a person who has lawfully come into possession, and is now holding over after the termination of that tenancy. A mortgage may also be referred to the head of a chattel interest in land.

Q. What covenants in a lease run with the land demised and bind the assigns (whether named in the covenants or not) of the lessee and lessor respectively?

A. A covenant is said to run with the land or with the reversion respectively when either the liability to perform it, or the right to take advantage of it, passes to the assignee of the land or reversion respectively. At Common Law, covenants ran with the land, but not with the reversion, so that the assignee of the lessee could sue, but not the assignee of the lessor, except under a power of attorney in the lessor's name. By 32 Henry 8, c. 34, it was provided that the assignee of the reversion should have the like remedies against the lessee and his assigns as the lessor had, and *vice versâ*, that the lessee and his assigns should have the like remedies against the lessor's assignee as he had against the lessor. This statute was, however, held only to extend to covenants which touch and concern the thing demised, and not to collateral covenants. Thus, (1) all implied covenants

run with the land; also (2) covenants touching a thing in *esse*, parcel of the demise, although assignees are not mentioned; and, (3) covenants to do some act upon the thing demised, if the assignee is mentioned. And now, by 44 & 45 Vict., c. 41, it is provided—as to leases made after 31st December, 1881—that (section 10) the rent reserved by, and the benefit of every covenant or provision contained in, the lease having reference to the subject matter thereof, and on the lessee's part to be observed, and every condition of re-entry and other condition, shall go with the reversion expectant on the lease, even if severed, and shall be recovered, enforced, and taken advantage of by the person entitled, subject to the term, to the income of the land leased; and that (section 11) the obligation of the lessor's covenants is to run with the reversion, so far as the lessor had power to bind the reversioners, and may be taken advantage of and enforced against the owner for the time being of the reversion.

Q. A lease for 99 years at £60 a year rent having expired, it is found that the tenant has not paid any rent, or otherwise acknowledged the lessor's title, for the last 15 years. What are the reversioner's rights with respect to (a) *the rent;* (b) *the land?*

A. *(a)* If the lessee is still in possession, he can distrain for the rent accrued due within the six years immediately preceding the entry of the distress (3 & 4 Wm. 4, c. 27, sec. 42); and, the demise being by deed, he may sue the lessee for the rent which accrued due within twenty years preceding the issue of the writ. (3 & 4 Wm. 4, c. 42, sec. 3; Indermaur's Common Law, 5th edition, 76; Lewis v. Graham, 80 *Law Times* Newspaper, 66.) *(b)* The reversioner may bring an action for the recovery of the land at any time within twelve years after the lease expires, as the possession of the lessee does not become adverse until then. (37 & 38 Vict., c. 57.)

Q. Would a covenant not to assign be broken by granting

an underlease, or by an equitable mortgage, or a bequest by the lessee's will, or by bankruptcy?

A. The covenant would not be broken by any of the four things specified. (Prideaux, Dissertation on Leases, Vol. II.)

Q. State the provisions of the Conveyancing Act, 1881, *sec.* 14, *respecting restrictions on, and relief against, forfeiture of leases.*

A. A lessor cannot take advantage of a right of forfeiture reserved on breach of conditions of a lease, until he has first served on the lessee notice (1) specifying the breach complained of, (2) requiring the lessee to remedy the breach, if possible, and (3) requiring money compensation for the breach; and the lessee has failed to comply with such notice for a reasonable time. Even then the lessee may apply to the Court for relief from forfeiture, and the Court may exercise its discretion, and impose terms. The section applies to leases, underleases, and grants at fee farm-rent, or at a rent upon condition; although the right of re-entry is reserved pursuant to the directions of a statute; and affects all existing and future leases notwithstanding stipulation otherwise. A lease *until* breach of condition shall take effect for as long a term as it can legally exist, subject to the proviso for re-entry on such breach. The section does *not* extend to covenants or conditions against assigning, underletting, parting with the possession, or disposing of, the land leased; nor to conditions for forfeiture on bankruptcy of lessees, or on execution against lessee's interest; nor (in a mining lease) to a covenant or condition for lessor to have access to, or inspect accounts, or machinery, or the mine or workings; nor does it affect the law of forfeiture or relief for non-payment of rent.

Q. State the provisions with regard to the severance of a reversion upon a lease contained in the Acts 22 *&* 23 *Vict., c.* 35, *and* 44 *&* 45 *Vict., c.* 41 *(the Conveyancing Act*, 1881*).*

A. By 22 & 23 Vict., c. 35 (sec. 3), where the reversion on

a lease is severed, and the rent is legally apportioned, the assignee of each part of the reversion shall have the same power of re-entry for his apportioned part of the rent and conditions as if it had been given him by the original lease. And by the Conveyancing Act, 1881 (sec. 12), the owner of the severed part of the reversion upon a lease created after 1881 is entitled, in respect of his part of the reversion, to the advantage of every right of re-entry, and every other condition in the lease.

Q. Do a lessee of lands, and the assignee of a lease of lands, subject to a yearly rent and the usual covenants, respectively get rid of their liabilities to the lessor by assigning the premises?

A. The lessee continues liable, notwithstanding assignment, for the rent and upon the covenants; but an assignee is only liable for the rent and on the covenants so long as he remains assignee.

Q. The purchaser of an underlease requires the seller to prove that all the covenants and provisions in both the underlease and the superior lease have been performed and observed down to the time of actual completion of the purchase. How shall the seller comply with the requisition?

A. By the simple production of the receipt for the last payment for rent under the underlease before the date of actual completion of the purchase. (Conveyancing Act, 1881, sec. 2 (5).)

Q. (a) *What are the relative advantages and disadvantages of mortgaging leaseholds by demise and by assignment, respectively?* (b) *How can a trustee in bankruptcy get rid of the liabilities attaching to the bankrupt's leaseholds?*

A. *(a)* A mortgage of leaseholds should always be by underlease, as thereby the mortgagee incurs no liability on the rents and covenants contained in the original lease. *(b)* By disclaiming, but the leave of the Bankruptcy Court must usually be obtained.

Q. What effect has the disclaimer of a lease by the trustee

in bankruptcy of the lessee upon the lessor, the lessee, and persons claiming under the lessee respectively?

A. It determines the rights, interests, and liabilities of the bankrupt and his property in respect of the lease as from the date of the disclaimer; but does not, except so far as is necessary for the release of the bankrupt and his property, and the lessee from liability, affect the rights or interests of others. Any person claiming under the lessee, *e.g.*, a mortgagee or underlessee, may apply to the Bankruptcy Court for an order vesting the disclaimed lease in him, subject, however, to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed.

Q. If a term of years be bequeathed to A for his life, and after his death to B, in whom does the whole term vest, and what interest has B therein, during A's lifetime?

A. The whole term of years is considered as vesting in the legatee for life, A, but on his decease the term is held to shift away from him, and to vest, by way of executory bequest, in the person next entitled, B. During A's life, B has technically no vested estate, but a mere possibility.

Q. How may a lease for years be surrendered? What difference does it make to an underlessee whether the lessee surrenders the lease, or the lessor re-enters on a forfeiture?

A. By a surrender in law, *i.e.*, the grant of a new lease either to the tenant or to a third person, with the tenant's consent, which operates in law as the surrender of the existing one; or by a surrender in fact, where the lessee assigns his interest in the lease to the remainderman or reversioner, which must be by deed (8 & 9 Vict., c. 106), unless the lease is one which by law could have been created without writing, and is called a surrender, or bequeaths his interest to the remainderman or reversioner in his own right. If the lessee surrenders a lease, his underlessee is not prejudiced, but by 4 George 2, c. 28, the reversioner next after the lessee becomes his landlord; but if the lessee's term is

put an end to by re-entry, under the forfeiture clause, the underlessee's term, which is carved out of the lessee's interest, is gone also.

Q. In what ways may a term of years, created by lease, be determined?

A. By effluxion of time. By an express surrender of the term. By a surrender in law, *e.g.*, where the tenant accepts a new lease from the landlord to take effect *in præsenti*. By merger, if the tenant acquires in his own right an ulterior estate immediately subsequent to the term. By re-entry for condition broken, subject to sec. 14 of 44 & 45 Vict., c. 41.

Q. Explain the doctrine of estoppel with reference to leases for years.

A. If a lease is made by deed, the lessor is estopped from disputing the grant, and the lessee is estopped from denying the lessor's right to make it; and this although the lessor had not, at the time of making the lease, either the lands or the title. But, if the lessor during the lease becomes entitled to the lands, the lease at once takes effect for all purposes. If the lessor had, at the time of making the lease, any interest in the lands, that interest only will pass, and the lease will have no further effect by estoppel, and although the lessor had professed to grant more than he really possessed.

Q. By what methods can long terms of years be enlarged into fee simple, and what is the effect of such enlargement?

A. By a mere declaration to that effect in a deed executed by the beneficial or legal owner of the term, which vests in him, a fee simple estate—subject to all the trusts, powers, executory limitations over, rights, equities, and covenants, and provisions as to use and enjoyment, and all obligations to which the unconverted term was subject; and if the term had been settled along with freeholds in strict settlement, the fee simple shall devolve exactly like those freeholds, unless some person had previously to the enlargement become absolute owner of the term; and the

fee simple shall include minerals which have not previously been severed in right or in fact, or reserved by an Inclosure Act or award. (Conveyancing Act, 1881, sec. 65, *ante*, pages 20, 21.)

15.—Mortgages, &c.

Q. Distinguish the different kinds of security created by mortgages, liens and charges respectively.

A. A mortgage is a transfer of ownership from the mortgagor to the mortgagee, subject to a proviso for redemption and reconveyance upon payment of the mortgage money with interest and costs; the legal ownership is in the mortgagee, and the beneficial ownership is in the mortgagor; if the money is not paid on the covenanted day, the mortgagee can enforce his security in a variety of active ways. *A lien* at common law is a mere passive right to keep certain goods until claims against the owner are paid; it is general or special; it gives active rights to an innkeeper under the Innkeepers' Act, 1878, and a solicitor under the Solicitors' Act, 1860; it is neither a right of property in the thing nor of action to the thing; it is not barred by statutes of limitation, but is lost by parting with possession; an equitable lien, *e.g.*, vendor of land for unpaid purchase-money, exists apart from possession, and can be enforced by action. A charge is an obligation imposed on property, and creates a trust which equity will enforce, *e.g.*, portions or legacies charged on land.

Q. Describe the methods of creating legal and equitable mortgages of leaseholds and copyholds respectively.

A. A legal mortgage of leaseholds may be by assignment or underlease; of copyholds, by conditional surrender. An equitable mortgage is always by deposit of the muniments of title, with or without a memorandum, or by a mere memorandum of a charge. The distinction is that a legal mortgage transfers legal ownership to the mortgagee, with legal rights against the property; while an equitable mort-

gage transfers no legal ownership, but simply gives the mortgagee rights enforceable in equity.

Q. (a) *What provisions are implied in a statutory mortgage of land under the Conveyancing Act,* 1881, *sec.* 26; *and* (b) *what remedies, under the Act generally, has a statutory mortgagee for enforcing his security?*

A. (*a*) In a statutory mortgage there are implied by sec. 26 of the Conveyancing Act, 1881: (1) a covenant with the mortgagee by the mortgagor to pay the stated mortgage money on the stated day with interest at the stated rate, and thereafter, so long as any of the mortgage money remains unpaid, to pay interest on the unpaid portion at the stated rate by equal half-yearly payments commencing at the end of six calendar months from the day stated for payment of the mortgage money; and (2) a proviso for redemption and reconveyance on payment of the mortgage money and interest on the stated day. (*b*) The remedies of a statutory, or other, mortgagee for enforcing his security under the Act of 1881 are:—(1) Sale when the mortgage money is due, secs. 19 (1), 20, and 21. (2) Insurance, secs. 19 (2) and 23. (3) Appointment and removal of a receiver, secs. 19 (3), 24. (4) Power to give receipts for purchase and other moneys and securities, sec. 22. (5) Recovery of the title-deeds after his power of sale becomes exerciseable, except against persons having prior claims, sec. 21 (7). (6) Obtain an order for sale in an action for foreclosure and redemption, sec. 25 (2). (7) When in possession make or agree to make agricultural or occupation leases not exceeding 21 years, and building leases not exceeding 99 years, by sec. 18, unless excluded. (8) When in possession cut and sell timber, sec. 19.

Q. Against what persons respectively is an unregistered bill of sale valid or invalid?

A. The subject of bills of sale is governed by two Acts passed respectively in 1878 and 1882 (41 & 42 Vict., c. 31; and 45 & 46 Vict., c. 43). The latter Act applies to all bills of sale given by way of security for money, and the former

Act to instruments given other than as security for money, *e.g.*, all absolute bills of sale. The effect of non-registration of a bill of sale under the Act of 1878 is, to render the instrument void (if the chattels are allowed to remain in the apparent possession of the grantor) as against execution creditors and trustees in bankruptcy, but not as between the parties; but under the Act of 1882, a bill of sale is absolutely void if not duly registered.

Q. A proposes to borrow from B £1000 on the security of A's possessory life interest in Consols in Court in an administration action, and his absolute reversion under a settlement, and (subject to his mother's life interest therein) in railway stocks standing in the names of trustees. What precautions before, and after, the loan should B take, and what risks would he run by neglecting them?

A. Prior to the loan, B must satisfy himself as to the sufficiency of the proposed security, by ascertaining the nature and extent of A's life interest in the property proposed to be mortgaged; that such interest is in possession; that there are no charging orders and stop orders on the funds in Court; that the reversion under the settlement is unincumbered; that the railway stock is intact, and there is no distringas upon it, and that the trustees have no notice of any charges. Otherwise B would run the risk of obtaining a fraudulent or insufficient security. After the advance, B should at once obtain a stop order on A's life interest in the fund in Court; give notice to the settlement trustees (if any); register his security, if the settled lands are in a register county; put a distringas on the stock to prevent its being dealt with except on notice to him; and serve the trustees of the stock with notice of his security. Otherwise he might be postponed to a *bonâ fide* purchaser without notice, or a mortgagee who had perfected his security, or to successful fraudulent dealings with the property.

Q. Explain how the title of a mortgagor may become barred by the Statutes of Limitation.

A. It will become so barred, if the mortgagee enters into possession and holds for 12 years without giving any acknowledgment in writing of the mortgagor's right to redeem. (37 & 38 Vict., c. 57, sec. 7.) It has been decided that in this case there is no further period allowed for disabilities. (Forster v. Paterson, 17 Ch. Div., 132.)

Q. (a) *On the death of a sole mortgagee of freeholds to whom should the mortgage debt be paid, and by whom may the mortgaged estate be conveyed to the mortgagor? State what the law formerly was upon this point, and how it was altered.* (b) *On the death of a mortgagor, out of what property is the mortgage debt primarily payable? What was the old law upon this point, and how was it altered?*

A. *(a)* Under sec. 30 of the Conveyancing Act, 1881 (44 & 45 Vict., c. 41), the mortgage money will be paid to the personal representatives of the mortgagee, who are also the proper persons to reconvey. Formerly, the money would have been paid to the personal representatives, and the heir or devisee, as the case may be, would have been the person to reconvey. *(b)* Formerly, out of the general personal estate, but now, under 17 & 18 Vict., c. 113, out of the mortgaged estate itself, unless there is a contrary intention expressed in the mortgagor's will, and a mere general direction for payment of debts is not a sufficient contrary intention. (30 & 31 Vict., c. 69.) The 17 & 18 Vict., c. 113, did not formerly apply to leaseholds (Solomon v. Solomon, 33 L. J., Ch., 473); but it does now (40 & 41 Vict., c. 34).

Q. Define the equitable doctrine of tacking, and show how it has been affected by recent legislation.

A. It has been defined as the uniting of two incumbrances with the view of squeezing out an intervening one, prior in point of time to the security tacked, and it depends on the maxim, "Where the equities are equal, the law shall prevail." Tacking was abolished by the Vendors' and Purchasers' Act, 1874 (37 & 38 Vict., c. 78, sec. 7), which came into operation on 7th August, 1874; but this provision was repealed by the

Land Transfer Act, 1875 (38 & 39 Vict., c. 87, sec. 129), except as to anything done thereunder before 1st January, 1876. (Marsh v. Lee, and Notes, Indermaur's Conveyancing and Equity Cases.)

Q. A mortgaged Blackacre to B for one sum; he afterwards mortgaged Whiteacre to B for another sum. Blackacre is an insufficient security for the money lent upon it, and A, therefore, does not wish to redeem it; but he wishes to redeem Whiteacre, which is an ample security for the money lent upon it. State what, under the aforesaid circumstances, were the rights of the mortgagee, before the Conveyancing Act, 1881, *came into operation, and what change in the law upon the subject was made by that Act?*

A. Before the Conveyancing Act, the mortgagee might have consolidated his mortgages, and refused to allow the mortgagor to redeem one without redeeming all. By sec. 17 of the Conveyancing Act, a mortgagor may redeem the property comprised in one mortgage, without paying any money due under a separate mortgage, provided one at least of the mortgages is made after 1881, unless the contrary is expressed in one of the mortgages. (See Vint v. Padgett, and Notes in Indermaur's Conveyancing and Equity Cases.)

Q. When, and to whom, is a mortgagee bound to transfer the mortgage, and to assign the mortgage debt?

A. He has always been bound, on payment off by any person entitled to redeem, to reconvey or transfer the estate. He was not, however, formerly bound to assign the mortgage debt itself, but he is now under section 15 of the Conveyancing Act, 1881 (44 & 45 Vict., c. 41); and under the Conveyancing Act, 1882 (45 & 46 Vict., c. 39), it is provided that a requisition for conveyance and assignment made by an incumbrancer shall prevail over a like requisition by the mortgagor, and as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

Q. What statutory powers does the owner of a legal rent

charge possess where the rent charge was created by deed since 1881 ?

A. *(a)* If the rent charge is in arrear for 21 days a power of distress; *(b)* if in arrears for 40 days, power to enter into possession and take the income till satisfaction; or instead, or in addition, *(c)* power to demise the land to a trustee for a term of years on trust, by way of mortgage, or sale, or demise, of the whole, or any part, of the term to raise the money to satisfy arrears. These powers are subject to any contrary provisions, or intention, in the instrument creating the rent charge.

Q. What are the provisions of the Locke King Acts ?

A. The general effect of these Acts is that—when real estate (17 & 18 Vict., c. 113) or chattels real (40 & 41 Vict., c. 34) are devised to a devisee, or descend on intestacy (17 & 18 Vict., c. 113, and 40 & 41 Vict., c. 34) charged with any mortgage debt (17 & 18 Vict., c. 113) or lien for unpaid purchase-money (30 & 31 Vict., c. 69, and 40 & 41 Vict., c. 34)—in all cases the devisee or heir-at-law takes the property, subject to the charge, unless a contrary intention appears by the will. A charge or direction for the payment of debts will not be deemed a contrary intention. (30 & 31 Vict., c. 69.)

Q. Explain the nature of an equitable mortgage, and describe the various remedies to which the mortgagee is entitled.

A. It is created by a deposit of title deeds with or without a memorandum in writing, or by a memorandum without deposit; and is permitted from necessity, notwithstanding section 4 of the Statute of Frauds. (Russell v. Russell.) The remedies are (1) action of debt; (2) action of foreclosure, in which the Court has a discretion to order a sale under section 25 (2) of the Conveyancing Act, 1881; and (3) if there is a memorandum agreeing to give a legal mortgage, the mortgagee has a right to a sale, enforceable by action.

Q. Describe the different forms of debenture, and show in

what cases such securities are assignable free from equities affecting the assignor.

A. Mortgage debentures, *i.e.*, secured by a mortgage of or charge upon some property; bonds; and instruments not under seal entitled debentures and containing a promise to pay. The *primâ facie* rule is that it can only be assigned, subject to the equities existing between the original parties to the contract; but this rule will yield to a contrary intention appearing from the nature or terms of the contract, *e.g.*, where payable to bearer or holder.

Q. State briefly the main objects of the Acts relating to factors and pawnbrokers.

A. The Pawnbrokers' Act, which deals only with loans up to £10, provides that (1) a pledge up to 10s. becomes the absolute property of the pawnbroker, if not redeemed within a year and seven days, (2) a pledge over 10s. can be redeemed until sale by auction, (3) the pawnbroker is absolutely liable for loss by fire, and can insure, (4) on a conviction for illegal pawning, the Court may order the delivery of the goods to the owner with or without compensation to the pawnbroker. The general effect of the Factors' Acts is to render valid, sales and pledges by factors, notwithstanding notice that they are factors and agents, if the party dealing with them has no notice of their want of authority or *mala fides*.

16.—Title and Miscellaneous Points.

Q. What length of title is the purchaser of a freehold estate under an open contract entitled to require? What change has been made in the law on this subject by any statute passed recently?

A. Forty years; formerly the period was sixty years. The change is made by the Vendors' and Purchasers' Act (37 & 38 Vict., c. 78), sec. 1. But in Bolton v. London School Board, 17 Ch. Div., 766, it was held that where A bought from B under such a contract, and one of the muniments of title was a conveyance, twenty years old at the date of the contract,

which contained a clear and unambiguous recital that the then vendor was seised in fee, A could not go beyond that and require any earlier title, unless he could prove the recital to be inaccurate, because of section 2 of the same Act.

Q. Under an open contract for sale, what title must be shown by the vendor of an advowson, tithes, and long leaseholds, respectively?

A. To an advowson, the title shown must extend over one hundred years, and a list of presentations should be annexed to the abstract. In the case of tithes, the original grant from the Crown must be produced, and sixty years' title prior to the contract shown, as it is doubtful whether the Vendors' and Purchasers' Act, 1874, reducing the time to forty years, applies to incorporeal hereditaments. And the abstract of title to the long leaseholds should commence with the original lease, and then show the title to that lease for forty years prior to the date of the contract if the lease has been so long granted, but in no case can the title to the reversion (whether leasehold or freehold) be called for. (Prideaux, Vol. I.)

Q. What length of adverse possession will bar the true owner's right to recover land?

A. Twelve years, with an allowance of six years after disability where the owner is an infant, idiot, lunatic, or person of unsound mind when his right of action accrues, provided that the entire period in case of disability shall not exceed 30 years. (37 & 38 Vict., c. 57.)

Q. Explain the difference in form between a deed of covenant and a bond for securing payment of money. What advantage has the covenantee or obligee over a simple contract creditor of the covenantor or obligor?

A. The difference is that, in the deed of covenant, the covenantor covenants to pay the sum of money which he is meant to, and is actually liable to, pay; whilst in a bond, the person giving it is bound in a certain penal sum, and then follows a condition or provision stating that if a certain

smaller sum, being the actual debt, is paid on a certain day, then the bond is to be void. In either case, now, only the actual amount due can be recovered. The only advantage that the covenantee or obligee would have over a simple contract creditor would be that he would have twenty years within which to sue instead of six. Formerly, he had a priority in payment on the death of the covenantor or obligor, but this is no longer so by 32 & 33 Vict., c. 46.

Q. State the law relating to insurable interests as affecting policies of life insurance.

A. By 14 George 3, c. 48, contracts of life insurance are void, unless the person for whose benefit the assurance is effected has an insurable interest in the life insured at the time when the insurance is effected; the name of the person in whose favour the policy is taken out must be stated in it; and only the amount of the insurable interest can be recovered. A man may insure his own life; husband and wife may insure in each other's favour; a creditor may insure his debtor's life to the amount of his debt.

Q. Describe the nature of the contract of life assurance, and state the effect of the Married Women's Property Act, 1882, on contracts of this kind.

A. It is not a mere contract of indemnity, but is a contract to pay a certain sum of money on the death of a person in consideration of due payment of an annuity for his life, Dalby v. India and London Life Assurance Company (Indermaur's Common Law, 5th edition, 192). By section 11, the wife may effect an insurance on her own life, or her husband's, for her separate use, and either may effect an insurance on his or her life, expressed to be for the benefit of the other, or the children or both, which will create a trust for the declared objects, and prevent the policy moneys (so long as any object of the trust remains unperformed) forming part of the estate or being responsible for the debts of the insured; but on proof that the policy was effected and premiums were paid to defraud the insured's creditors, the creditors are en-

titled to receive such premiums out of the policy moneys. The insured may, by the policy or a signed memorandum, appoint trustees of the policy moneys, and appoint new trustees, and provide for so doing and for investment of the moneys. If no other trustee is appointed, the insured is trustee. The Court can appoint new trustees under the Trustee Act, 1850. The receipt of the trustee, or (if none, or if he gives no notice to the insurance office) of the insured's personal representative, is to be a good discharge for the policy moneys.

Q. What is a satisfied term, and what protection can it afford to the inheritance? Refer to the Satisfied Terms Act.

A. A satisfied term is a term, the object for the creation of which has been accomplished; the term still exists, unless there was a proviso for its cessor in the instrument creating it. It was generally a long term of years vested in the trustees of a settlement for raising portions for younger children. It can now afford no protection to the inheritance, because of the Act. But formerly, where the owner in possession was liable to be evicted by some one claiming under a title, prior to his own but subsequent to the creation of the term, the owner used to take an assignment from the trustees in trust for himself to attend upon and protect his inheritance. And if, afterwards, the owner's title were assailed, he could set up the term and hold under it till it expired. But by 8 & 9 Vict., c. 112, all terms satisfied and attendant on 31st December, 1845, were to cease, but afford the same protection as if they still existed; and all satisfied terms becoming attendant after that date were to cease without affording any protection.

Q. Describe the incidents of a corporation, and state the principal classes into which corporations may for legal purposes be divided.

A. A corporation is an artificial personage created by law, and endowed by it with the quality of a perpetual existence and a corporate seal. It may be either *ecclesiastical, e.g.*, a

bishop, or a dean and chapter, in which case it is formed solely of spiritual persons and for the furtherance of religion and perpetuation of the rights of the church, or *lay*. Lay corporations are either *civil* or *eleemosynary*. Any corporation may be either *aggregate*, composed of more persons than one, or *sole*. It may arise by special Act of Parliament or Royal Charter, or under the Companies Act, 1862, or may exist as a corporation at common law or by prescription.

Q. In what different ways may a corporation be dissolved?

A. (1) By Act of Parliament; (2) by the natural death of all its members in the case of a corporation aggregate; (3) by surrender of its franchises; (4) by forfeiture of its charter. As regards a company registered under the Companies Act, 1862, that is liable to be wound up either voluntarily, or under the supervision of the Court, or compulsorily by the order of the Court.

Q. Explain the meaning of the following terms: Trade mark, mortmain, *and* elegit.

A. *Trade mark* means a mark or device used by a manufacturer to designate goods made by him; it must consist of or contain one of the following essentials:—A name of an individual or firm, *or* a written signature, *or* a distinctive device, mark, brand, heading, label, or ticket, *or* an invented word or words, *or* a word or words (not being geographical) having no reference to the character or quality of the goods; it must be registered in connection with particular goods or classes of goods; can only be transmitted with, and ends with, the goodwill of the business; and is now governed by the Patents Act, 1883, as amended by 51 & 52 Vict., c. 50. *Mortmain (in mortuâ manu)* means an alienation of land to any corporation, which still causes the lands to be forfeited to the Crown unless the corporation is by statute or licence authorized to hold lands; the law hereon is now consolidated in the Mortmain Act, 1888. *Elegit* is a process of execution by which the judgment creditor is put into possession of the debtor's legal estates in real property until

the rents and profits pay the debt; the creditor having the right also to apply for a sale of the lands after registry of the execution under 27 & 28 Vict., c. 112; to obtain priority over a purchaser without notice, registration is now required under sections 4, 5, and 6 of the Land Charges Registration Act, 1888.

Q. State the rules under which protection is attainable for paintings, drawings, and photographs.

A. By 25 & 26 Vict., c. 68, the author (being a British subject or resident within the dominions of the Crown) of any painting or drawing, or the negative of any photograph, shall have the copyright therein for his life and seven years; but if the same shall, for the first time after 29th July, 1862, be sold or disposed of, or made or executed for a good or valuable consideration, the vendor or author shall not have the copyright therein unless expressly reserved to him at the time by signed agreement, but it shall belong to the purchaser or person for whom executed, nor shall the vendee or assignee be entitled to the copyright unless expressly so agreed in signed writing. Such copyright is personal estate; must be registered at Stationers' Hall to give a right enforceable by action; and assigned by writing. Penalties are imposed for infringement.

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